

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES PALMER
Claimant

APPEAL 17A-UI-11156-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 06/25/17
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.6(1) – Filing Claims
Iowa Admin. Code r. 871-24.2(1)g – Retroactive Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 9, 2017 (reference 05) unemployment insurance decision that denied the request for retroactive benefits. After due notice was issued, a telephone conference hearing was scheduled for November 16, 2017. Claimant participated personally and through his spouse, Yavonne Palmer.

ISSUES:

Is the appeal timely?
Should the claimant's request for retroactive benefits be granted for the one-week period ending July 8, 2017?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: On June 30, 2017, claimant was informed by his employer he was going to be laid off for the one week ending July 8, 2017. Claimant's employer instructed him to visit Iowa Workforce Development's local office to assist him with filing a claim for unemployment benefits with an effective date of June 25, 2017. Claimant went into the office the same day. An IWD representative assisted claimant in filing an initial claim that day. Claimant sought personal assistance because he does not have a high school diploma and often needs help understanding things. The IWD representative instructed claimant to come into the local office on Wednesday, July 5, 2017, to file his weekly continued claim. Claimant followed the instructions and was assisted by an IWD representative in filing a weekly continued claim on July 5. Claimant filed the weekly claim for the one week ending June 30, 2017, either because of a miscommunication or because of inaccurate advice given by the IWD representative. Claimant received a benefit payment for the week ending June 30, 2017, and did not file a weekly claim for the week ending July 8, 2017, as he was instructed by the IWD representative he did not need to do so.

Later in July 2017, IWD sent claimant a letter stating his employer reported he received wages during the one week ending June 30, 2017, and gave him until August 3, 2017, to respond to Sandi, Deputy 63. Claimant responded in writing by the deadline. Claimant attempted to clear up the confusion and made a request for retroactive benefits for the one week ending July 8, 2017.

On August 9, 2017, a reference 05 decision was issued denying claimant's request for retroactive benefits during the one week ending July 8, 2017. At the bottom, the decision states:

THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 08/19/17, OR RECEIVED BY IOWAWORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE. IF THIS DATE FALLS ON A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT WORKING DAY.

The back of the decision gives several points of contact for the appeals section, including a mailing address, a fax number, a phone number, and an email address. Claimant received the decision within the appeal period.

Instead of filing an appeal, claimant sent a fax to Deputy 63 on or about August 19, 2017. Claimant did not receive any notice of appeal hearing. At this point, claimant's spouse decided the next best step would be to set up an in-person meeting with IWD. Since claimant and his spouse work opposite shifts, the meeting did not occur until October 31, 2017. At that time, claimant and his spouse were instructed to file an appeal with the appeals section. The appeal was filed the same day, on October 31, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a

mandatory duty to file appeals from unemployment insurance decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Claimant failed to follow the clearly written instructions on the decision that direct claimant to submit any appeal to the appeals section. Claimant was not given inaccurate advice on filing an appeal. When claimant did not receive any notice of appeal hearing, he failed to follow up with the agency in a timely manner.

The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The August 9, 2017, (reference 05) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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