

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRISHA D DUNKELBERGER
Claimant

APPEAL 17A-UI-12475-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 11/12/17
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)h(1), (2) – Backdating

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 22, 2017, (reference 01) unemployment insurance decision that denied the request to backdate the claim for benefits prior to November 12, 2017. After due notice was issued, a hearing was scheduled to be held by telephone conference call on December 28, 2017. Claimant participated. Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the appeal timely?
May the claim be backdated prior to November 12, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits with an effective date of November 12, 2017, and desires to backdate the claim to October 22, 2017. The claimant was permanently separated from employment on October 20, 2017, from MG Biologics, and delayed filing her claim until the week of November 12, 2017 because her former employer told her she was not eligible for benefits while receiving severance pay.

The department has not failed to recognize the expiration of the claimant's previous benefit year and there is not an interstate claim against another state which has been determined as ineligible.

The claimant is requesting to backdate her claim to October 22, 2017.

An initial unemployment insurance decision denying the request to backdate the claim was mailed to the claimant's last known address of record on November 22, 2017. She received the decision within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 2, 2017. Because December 2, 2017 was a Saturday, the final date to appeal was extended to December 4, 2017. The claimant delayed contacting IWD but attempted to call on December 4, 2017. She was given a prompt that the wait time was approximately one hour. The one hour time conflicted with a scheduled job interview so she was unable to receive assistance on December 4, 2017, because the IWD office was closed after her interview. The claimant again contacted IWD on December 5, 2017 for guidance and then filed her appeal via email the same day (Department Exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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).

Based on the evidence presented, the claimant delayed contacting IWD until the final day to appeal for guidance and was unable to receive assistance. While such delay is not recommended, it was still timely, and the administrative law judge also recognizes the agency was unavailable to assist the claimant with her questions in a reasonable period of time. Accordingly, the record shows that the appellant did not have a reasonable opportunity to file a timely appeal. Her follow up the following day, and completing the appeal was within a reasonable period. Accordingly, the administrative law judge concludes the appeal was timely filed.

For the reasons that follow, the administrative law judge concludes the claimant's request to backdate the claim must be denied.

Iowa Code section 96.6(1) provides:

1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Effective Wednesday, July 12, 2017, for claims effective July 16, 2017:

Iowa Admin. Code r. 871-24.2(1)h(1) and (2) provide:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

1. The failure of the department to recognize the expiration of the claimant's previous benefit year;
2. The claimant filed an interstate claim against another state which has been determined as ineligible.

While the claimant has presented reasons for backdating that would have previously been considered "sufficient grounds" to grant the request, after an agency and legislative rulemaking process, effective July 12, 2017, Iowa Admin. Code r. 871-24.2(1)h(1) and (2) allows backdating for only the two reasons cited above. Neither of those reasons applies in this case. Accordingly, the backdating request must be denied.

DECISION:

The November 22, 2017, (reference 01) unemployment insurance decision is affirmed. The appeal was timely. The claimant's request to backdate the claim is denied.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn