

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RICHARD G NORTON
340 BIRDIE LN
DIKE IA 50624-9633**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-07559-JTT
OC: 07/19/06 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3(4) – Determination of Benefits

STATEMENT OF THE CASE:

Richard Norton filed a timely appeal from the July 19, 2006, reference 02, decision that denied his request to change the number of dependants on his benefits. After due notice was issued, a hearing was held on August 14, 2006. Mr. Norton participated in the hearing. Claimant's Exhibits A through F were received into evidence. The administrative law judge took official notice of the Agency's administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On Friday, June 30, 2006, Richard Norton applied for unemployment insurance benefits via the Internet. At that time, Mr. Norton indicated that he was claiming his spouse as a dependent. Mr. Norton

provided the name of his spouse, answered that his spouse had not filed an unemployment insurance claim in the last 12 months, and answered that his spouse has not earned more than \$120.00 in the prior week. Mr. Norton further indicated that he was claiming no other dependents. Mr. Norton completed his application for benefits and transmitted the application to Iowa Workforce Development. Mr. Norton printed out a copy of the application.

On Monday, July 3, 2006, Iowa Workforce Development mailed to Mr. Norton a computer-generated monetary record, form 65-5318. The document erroneously indicated that, "number of dependents = 0." The monetary record indicated a weekly benefit amount of \$324.00. Mr. Norton assumed that someone at the Agency would review his application for accuracy, note the computer error pertaining to the number of dependents, and correct the error pertaining to the number of dependents, weekly benefit amount, and maximum benefit amount prior to issuance of an initial benefit check.

The Agency issued Mr. Norton's initial benefit check on July 13, 2006. The net benefit was based on a gross benefit amount of \$324.00 for the benefit week that ended July 8, 2006. Mr. Norton had elected to receive payment in the form of warrants and did not receive his first check until July 19. At that time, Mr. Norton concluded the error in the number of dependents and associated errors had *not* been corrected by the Agency. Mr. Norton contacted the Waterloo Workforce Development Center. An Agency representative told Mr. Norton she would "take care of it" by forwarding the correct information to the Iowa Workforce Development in Des Moines. On the same day, the Agency entered the reference 02 decision denied the request to change the number of dependents and deemed the request untimely.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Norton should be entitled to have Iowa Workforce Development correct its own generated error. The related question is whether Mr. Norton waived his right to have the error corrected by not bringing the error to the Agency's attention within 10 days of July 3, 2006, the date upon which the monetary record was mailed.

Iowa Code section 96.3-4 provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage.
0	1/23	53%
1	1/22	55%
2	1/21	57%

3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

871 IAC 24.2(4)c provides:

Cancellation of unemployment insurance claim.

c. Cancellation requests within the ten-day protest period. The claims section, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

- (1) The individual found employment or returned to regular employment within the protest period.
- (2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.
- (3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.
- (4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

871 IAC 24.9(1) provides as follows:

Monetary determinations.

a. When an initial claim for benefits is filed, the department shall mail to the individual claiming benefits a Form 65-5318, Iowa Monetary Record, which is a statement of the individual's weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual's benefit rights.

b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

c. If newly discovered facts are obtained by the department or a written request for reconsideration is filed by the individual and is timely, an unemployment insurance representative shall examine the facts or the written request for reconsideration and

shall promptly issue a redetermination or transfer the written request to an administrative law judge. The redetermination of the monetary record shall constitute a final decision unless a written appeal to an administrative law judge is filed by the individual within ten days of the date of the mailing of the redetermination specifying the grounds of objection to the redetermined monetary record. For the purposes of this paragraph, if the newly discovered facts obtained by the department would result in a change of the individual's maximum benefit amount of \$25 or less, the department representative is not required to issue a redetermination unless a redetermination is requested by the individual, the employer, or a representative of another state or federal agency responsible for the administration of an unemployment insurance law.

d. For the purposes of this subrule, the appeal period is extended to the next working day of the department in the event that the tenth day falls on a Saturday, Sunday, or holiday. Also, failure of an individual to properly complete and sign any document relating to the adjudication of a claim shall result in the return of the document to the individual for proper completion or signature; however, an extension of the appeal period to allow for the return of the documents shall not be granted.

The evidence in the record establishes that Mr. Norton's request to have the Agency correct a computer error was *not* in fact a request for redetermination of his benefits. Mr. Norton was not merely disagreeing with the Agency's prior calculation of benefits or bringing to the Agency's attention an error he or his employer had made in connection with the calculation of benefits. Instead, Mr. Norton attempted to bring to the Agency's attention facts which affected the validity of the original determination. These were newly discovered facts insofar as the Agency was not aware of its own error until Mr. Norton brought the error to the Agency's attention. In this case, a mechanical interpretation or application of the rule to reach a conclusion imposing an inaccurate determination of benefits based on Agency error would result in injustice to claimant.

DECISION:

The Agency representative's July 19, 2006, reference 02, decision is reversed. The Agency's records regarding the claimant's application for benefits shall be corrected to add the claimant's spouse as a dependent. The Agency should take additional action as necessary and appropriate to address the Agency's error.

jt/kjw