

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TONYA L GORDON
Claimant

APPEAL NO: 15A-UI-00651-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/23/14

Claimant: Appellant (2)

871 IAC 24.2(1)a & h(1) & (2) – Backdating
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Tonya L. Gordon (claimant) appealed a representative's January 5, 2015 (reference 01) decision that denied her request to backdate her additional claim prior to December 28, 2014. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on February 11, 2015. The claimant participated in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely?

Should the claimant's request to back date her additional claim to December 21, 2014 be granted?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on January 5, 2015. The claimant did not receive the decision until the evening of January 15, 2015 when her neighbor delivered it to her after it was mis-delivered to him. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 15, 2015. The appeal was not filed until it was faxed and received on January 16, 2015; which is after the date noticed on the disqualification decision.

The claimant had a temporary separation from employment through a layoff effective December 19, 2014. She had previously established a claim for unemployment insurance benefits effective March 23, 2014. On December 27 she attempted to reactivate her claim with an additional claim and to file a weekly continued claim but she received a message that the system was not available. She then contacted an Agency representative on December 29 and was assisted in reactivating her claim effective December 28, 2014.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 court has declared that there is a mandatory duty to file appeals from representatives' 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. IDJS*, 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. IDJS*, 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to rule 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

Agency rule 871 IAC 24.2(1)h provides that claims for unemployment insurance benefits are ordinarily effective on the Sunday of the calendar week in which the individual files the initial claim. For good cause, a claim may be backdated. The administrative law judge finds good cause in that the claimant made a bona fide attempt to reactivate her claim during the week which ended December 27, 2014. The claim should be backdated to December 21.

DECISION:

The representative's January 5, 2015 (reference 01) decision is reversed. The appeal in this case is treated as timely. The claimant's request to backdate her additional claim is granted.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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