

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

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Appeal Number: 04A-UI-02088-SWT
OC 01/04/04 R 02
Claimant: Appellant (4)

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 96.6-2 - Timeliness of Appeal
Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 26, 2004, reference 02, that concluded she was not eligible for unemployment insurance benefits for the two weeks ending January 17, 2004. A telephone hearing was held on March 16, 2004. The claimant participated in the hearing. No one participated on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer from August 15, 1992 to October 1, 2003. She was paid her regular wages through October 3, 2003. In addition, the claimant was paid for 12 weeks of severance pay (\$8,538.48) and 16 days of unused vacation (\$2,276.93).

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 4, 2004. Her weekly benefit amount was determined to be \$311.00. The employer responded to the notice of claim within ten calendar days of the date that it was mailed to the employer. In its response, the employer designated the period October 31, 2003 to January 9, 2004, as the period to which severance pay was to apply and January 23, 2004 through February 6, 2004, as the period to which the vacation pay was to apply. This designation was in error and the employer acknowledges the mistake. The 12 weeks of severance should have been applied to the period from October 6, 2003 through December 26, 2003. The 16 days of vacation should have been applied to the period from December 29, 2003, through January 19, 2004.

The claimant filed a weekly claim for the week ending January 10, 2004, and was paid \$311.00. The claimant did not receive any benefits for the week ending January 17, 2004. She properly reported \$142.00 for one day of vacation pay for the week ending January 24, 2004, and should have received \$162.00. She did not have any vacation pay to apply after January 19, 2004.

An unemployment insurance decision was mailed to the claimant's last known address of record on January 26, 2004. The decision stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by February 5, 2004.

The claimant did not receive the decision. She filed a written appeal on February 25, 2004, which is after the time period for appealing had expired. On January 22, 2004, she had submitted a document she labeled as an appeal but it was a response to the employer's protest. Later, when the claimant was denied benefits beyond January 19, 2004, she consulted the agency representative who had assisted her on January 22 and immediately resubmitted the appeal on February 25, 2004.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

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 Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file 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 claimant did not have a reasonable opportunity to file a timely appeal because she never received the decision.

The failure to file a timely appeal was due to some Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The appeal is deemed timely.

The next issue is whether the vacation pay was properly applied. Unused vacation pay must be deducted from unemployment insurance benefits: (1) if the employer reports the amount of vacation pay and designates the dates to which the vacation pay applies within ten days after receiving the notice of claim form and (2) if the claimant claims benefits during a week the employer designates for vacation pay. If an employer does not designate the dates to which vacation pay applies by the ten-day deadline, the unused vacation pay must be divided by five and applied to the first five working days after the claimant's last day of work. If the amount of vacation pay applied to a week is less than the claimant's weekly benefit amount, the claimant will receive an amount equal to the weekly benefit amount minus the vacation pay applied to the week. Iowa Code Section 96.5-7.

In this case, the employer admitted that it had improperly reported the day to which the severance and vacation pay applied. Properly applied, the claimant is ineligible for benefits for the weeks ending January 10 and 17, 2004, and eligible for partial benefits of \$162.00 for the week ending January 24, 2004. She is eligible for benefits without any deductions beginning with the week ending January 31, 2004.

DECISION:

The unemployment insurance decision dated January 26, 2004, reference 02, is modified in favor of the claimant. The claimant is ineligible for benefits for the weeks ending January 10 and 17, 2004, and eligible for partial benefits of \$162.00 for the week ending January 24, 2004. She is eligible for benefits without any deductions beginning with the week ending January 31, 2004.

saw/kjf