

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REX A MILLARD
Claimant

APPEAL NO: 07A-UI-05740-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/20/07 R: 02
Claimant: Appellant (1)

Section 96.6-2 - Timeliness of Appeal – Initial Monetary Determination/Record
871 IAC 24.9 – Monetary Determination/Record
Section 96.7-2-a(2) – Determination of Base Period

STATEMENT OF THE CASE:

Rex A. Millard (claimant) appealed a monetary determination/record dated May 24, 2007 that indicated the claimant had no base period wages and was therefore ineligible for unemployment insurance benefits. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on June 26, 2007. The claimant participated in the hearing. Administrative notice was taken of the claimant's appeal letter and the monetary determination/record. 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.

ISSUE:

Was the claimant's appeal of his monetary determination/record timely? If so, should the claimant's base period be changed so as to include wages which would make him eligible for unemployment insurance benefits?

FINDINGS OF FACT:

The claimant went to a local Agency office on May 24, 2007 and established an on-line claim for unemployment insurance benefits. The monetary determination/record was mailed to the claimant's last-known address of record on that same date. The ten-day deadline for appeal of the determination was June 3, 2007, which would have been extended to June 4, 2007 as June 3 was a Sunday. The claimant did not receive the determination/record until June 4, 2007. The appeal was not filed until it was postmarked on June 6, 2007.

The claimant last had wages in the fourth quarter 2005; his last employment ended November 22, 2005. He was incarcerated from August 2006 through May 2007. Upon his release from prison he went to the local Agency office on May 24. The claimant understood an advisor at that office to indicate that there was a law that would provide eligibility for unemployment insurance benefits to persons who had previously been incarcerated upon their release. The claimant was unable to identify what law might contain such a provision.

REASONING AND CONCLUSIONS OF LAW:

The initial issue in this case is whether the claimant timely appealed the monetary determination.

Unless the claimant or other interested party files an appeal from an Agency representative's monetary determination or decision within ten calendar days after the representative's monetary determination or decision is mailed to the party's last-known address, the determination or decision is final. Benefits shall then be paid or denied in accordance with the representative's determination or decision. Iowa Code § 96.6-2.

The ten calendar days for appeal begins running on the mailing date. The date indicated on the determination 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 determinations within the time allotted by statute, and that the administrative law judge has no authority to change a determination 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). Here the claimant did not receive the determination until the appeal deadline; he 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 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 v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979), and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The substantive issue is then whether the claimant's base period can be altered so as to provide eligibility for unemployment insurance benefits.

Iowa Code § 96.4-4 provides in pertinent part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3.

The only provision in law for substitution of wages from quarters prior to a person's normal base period is for persons who received workers' compensation temporary total disability or healing period benefits. Iowa Code § 96.7-2-a(2). There is no provision in either Iowa or federal law for altering a base period to provide unemployment insurance benefit eligibility for persons released from incarceration. The workforce advisor to whom the claimant spoke was either mistaken or the claimant may have misunderstood for what services the advisor was suggesting the claimant might be eligible; it is possible there are some special reemployment training services available for persons reentering the workforce from incarceration. Regardless as to how the misunderstanding occurred, if there is no statutory ground upon which a base quarter substitution can be made, there can be no substitution. Based upon the date the claimant established his claim for unemployment insurance benefits, by law his base period began January 1, 2006 and ended December 31, 2006. He has no wage credits during that period, and therefore is not currently eligible for unemployment insurance benefits.

DECISION:

The monetary determination dated May 24, 2007, is affirmed. The claimant has no base period wages and so is ineligible to receive unemployment insurance benefits.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs