

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES D RICHMOND
Claimant

APPEAL 20A-UI-03529-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/29/20
Claimant: Appellant (2)**

Iowa Code § 96.3(4) – Determination of Benefits
Iowa Code § 96.4(4) – Monetary Eligibility
Iowa Admin. Code r. 871-24.9(1)b – Monetary Determination – Timeliness

STATEMENT OF THE CASE:

The claimant/appellant, James D. Richmond, filed an appeal from the April 7, 2020 monetary determination that found he lacked sufficient earnings to receive regular Unemployment Insurance (UI) Benefits.

After proper notice, a telephone hearing was conducted on May 18, 2020. The claimant participated personally. The administrative law judge took official notice of the administrative records including Iowa Workforce Development's (IWD) records of claimant's wages for her base period and the employer's information on the MyIowaUI database. Claimant Exhibit A was admitted. 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.

ISSUES:

Is the monetary record dated April 7, 2020, correct?
Is the claimant monetarily eligible for benefits effective March 29, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established the claim for unemployment insurance benefits with an effective date of March 29, 2020.

To determine whether a claimant is monetarily eligible for unemployment insurance benefits, wages earned during the based period are reviewed. The base period for the claim year covers the fourth quarter of 2018, and the first, second and third quarters of 2019.

For unknown reasons, when the claimant's monetary record was generated, it reflected that Van Buren County Hospital was his last employer, but listed no wages.

A review of his wage history on the administrative records reflects the claimant's wages with Van Buren County Hospital are now listed as follows:

2018/4	\$22,996
2091/1	\$19,314
2019/2	\$23,130
2019/3	\$19,422

Claimant also presented evidence of wages earned (Claimant's Exhibit A).

A monetary determination dated April 7, 2020 was mailed to the claimant's address of record. The determination contained a warning that an appeal was due within ten days of the date of mailing of the determination. The appeal was due on April 17, 2020. On April 11, 2020, the claimant began contacting IWD for assistance and attempted to electronically submit proof of his wages, but was unsuccessful. He contacted IWD again on April 23, 2020 for additional guidance and submitted his appeal on April 24, 2020 (Claimant Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Admin. Code r. 871-24.9(1)(b) provides:

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.

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).

In this case, the claimant stated he received monetary record within the appeal period and began contact with IWD on April 11, 2020. Due to high volume, responses from IWD were delayed during this period of time, and it took the claimant multiple attempts to get the information he needed and learning his wages could not be submitted via email, before filing his

appeal on April 24, 2020. The claimant made a good faith attempt to receive assistance within the prescribed period. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the monetary record is not correct.

Iowa Code section 96.4(4)a provides:

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

4. a. 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 (**effective July 7, 2019 this amount is \$1,660**), 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 paragraph (**effective July 7, 2019 this amount is \$830**) 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.

Iowa Admin. Code r. 871-24.1(11) provides:

Base period. The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

- a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or
- b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

In this case, the claimant earned wages with Van Buren County Hospital during his base period and those wages have not yet been added to his monetary record. The claimant has presented

sufficient and credible evidence to establish insured wages in the quarters outlined above. Those wages shall be included in the monetary record for this base period and the monetary eligibility shall be determined. The employer shall be notified of the claim and shall have the opportunity to protest payment of benefits.

DECISION:

The April 7, 2020 monetary determination is not correct and reversed. The claimant filed a timely appeal. The wages outlined above shall be included in the monetary record and claimant's monetary eligibility shall be determined.



Jennifer L. Beckman
Administrative Law Judge
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May 22, 2020
Decision Dated and Mailed

jlb/scn