

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA L HANSON
Claimant

APPEAL NO: 18A-UI-06233-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/08/18
Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.2(1)g – Retroactive Benefits
Iowa Code § 96.6(1) – Filing Claims

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 1, 2018, (reference 02) unemployment insurance decision that denied retroactive benefits. The claimant was properly notified about the hearing. A telephone hearing was held on June 22, 2018. The claimant participated personally. Tammy Meier, human resources associate for Staples, also testified. Department Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents and the claimant's weekly continued claim history (KCCO). 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 appeal timely?

Should the claimant's request for retroactive benefits for the two-week period ending April; 21, 2018 be granted?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed an original claim effective April 8, 2018. When the claim was filed, the claimant was given the option of reading the Unemployment Insurance Handbook online or a hardcopy, and the claimant agreed that she would read and understand the handbook. The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions can lead to a denial of benefits. The handbook also informs claimants that they should call IWD customer service for help if they don't understand the information in the handbook.

The claimant performed work through April 13, 2018, but opened her claim with an effective date of April 8, 2018, in anticipation of a temporary layoff. The claimant did not intend to file a claim for benefits for the week ending April 13, 2018. Because the claimant did not file her

weekly continued claim for one week, her claim closed and she was unable to file her weekly continued claim the following week, for the week ending April 21, 2018. The claimant attempted to file her weekly continued claim on April 22, 2018, for the week ending April 21, 2018. When she was locked out and received a message about refiling, she thought that meant she had to wait until the following Sunday, and so on Sunday, April 29, 2018, the claimant again attempted to file her weekly continued claim but was unsuccessful. When the claimant recognized the issue, she contacted the Iowa Workforce Development (IWD) and was assisted in reopening the claim. The claimant earned no wages and did not receive any vacation or holiday pay for the week ending April 21, 2018. She was able and available for work.

An initial unemployment insurance decision (Reference 02) resulting in a denial of retroactive benefits was mailed to the claimant's last known address of record on May 1, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 11, 2018. The claimant did not receive the decision but stated she checked her mail daily during the period to appeal.

The appeal was not filed until June 6, 2018, which is after the date noticed on the denial decision. When the claimant called IWD on April 30, 2018 to request assistance with reopening her claim, she also made an application for retroactive benefits. The IWD representative told the claimant her request was "taken care of" and the claimant did not realize she should be anticipating an initial decision granting or denying the request. In early June, she contacted IWD and learned of the unfavorable decision. She appealed the decision within a couple of days and contacted IWD upon learning of it (Department Exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of

the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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).

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 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. 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).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant first learned of the unfavorable decision in June 2018 and filed her appeal within a few days thereafter. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant's request for retroactive benefits is granted for the one-week period ending April 21, 2018. The claimant is ineligible for benefits for the week ending April 14, 2018.

Iowa Code section 96.6(1) provides:

96.6 Filing — determination — appeal.

1. *Filing*. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

In order to be eligible for weekly benefits, the claimant must file an online web application continued claim or show good cause for the failure to do so to support a request for retroactive benefits. Iowa Admin. Code r. 871-24.2(1)g. Good cause involves circumstances beyond the claimant's control that prevent a claimant from filing a prompt and proper claim.

The claimant did not intend to file a weekly continued claim for the week ending April 14, 2018, because she worked her entire work week. In attempting to be proactive, she established her claim that week. When she failed to make a weekly continued claim for the week ending April 14, 2018, her claim closed due to inactivity.

The administrative law judge would note that the new April 2018 version of the *Unemployment Insurance Benefits Handbook* has added new language, including:

If any weekly claim filing is missed during the claim year, an individual must file an initial claim application to reactivate their claim. This would apply even if one week is not filed.

It is unclear based upon the timing of the claimant establishing her claim for unemployment insurance benefits, whether she received access to the prior version or April 2018 version of the handbook. Even if she did read the April 2018 version, it would have been technically impossible for the claimant to reopen the claim in order to file a continued weekly claim for the week ending April 21, 2018, based upon the timing of the claim closing due to inactivity. There is nothing the claimant could have done to prevent the second missed weekly claim filing.

Based on the evidence presented, the claimant has shown a good cause reason for failing to file her weekly continued claim for the one week ending April 21, 2018. Therefore, the claimant's request for retroactive benefits for the one week ending April 21, 2018, is allowed, provided the claimant is otherwise eligible.

DECISION:

The May 1, 2018, (reference 02) decision is modified in favor of the claimant/appellant. The appeal is timely. The claimant's request for retroactive benefits is granted for the one-week period ending April 21, 2018. The claimant is ineligible for benefits for the week ending April 14, 2018.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn