

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JO ELLEN GRANDPRE**  
Claimant

**APPEAL 18A-UI-01453-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 12/31/17  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.6(1) – Filing Claims  
Iowa Admin. Code r. 871-24.2(1)h(1), (2) – Backdating

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 16, 2018, (reference 02) unemployment insurance decision that denied the request to backdate the claim for benefits prior to December 31, 2017. After due notice was issued, a hearing was scheduled and held by telephone conference call on February 27, 2018. The claimant participated personally. The Department Exhibit D-1 (claimant’s appeal letter) was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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?  
May the claim be backdated prior to December 31, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits with an effective date of December 31, 2017, and desires to backdate the claim to December 24, 2017. The claimant failed to establish a claim during the first week she was temporarily unemployed from Pella Corporation.

The department has not failed to recognize the expiration of the claimant’s previous benefit year and there is not an interstate claim against another state which has been determined as ineligible.

An initial unemployment insurance decision (Reference 02) that denied her request to backdate the claim was mailed to the claimant's last known address of record on January 16, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 26, 2018. The appeal was not filed until January 31, 2018, which is after the date noticed on the disqualification decision (Department Exhibit D-1). The claimant received

the decision within the prescribed period but also then received the reference 01 decision dated January 25, 2018, regarding her employment status with Pella Corporation, and allowed benefits. Confused, the claimant met with Workforce Advisor, Sandra Trejo, on January 31, 2018, who advised her to appeal the backdating decision. The claimant did not attempt to file an appeal or seek counsel on the backdating initial decision within the prescribed period to appeal.

## **REASONING AND CONCLUSIONS OF LAW:**

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

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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The initial decision regarding the backdating request was mailed on January 16, 2018, and another initial decision unrelated to the backdating was mailed nine days later. The claimant had adequate time to contact Iowa Workforce Development with questions about the decision if she was unsure of how or whether to file an appeal. The fact that a second unrelated decision was rendered on January 25, 2018, did not cause delay in the claimant's filing of her appeal to the January 16, 2018 claim inasmuch as the claimant would not have likely received the second decision by January 26, 2018 (since it was rendered the day prior), which was the final day to appeal the backdating decision.

Therefore, based on the evidence presented, the administrative law judge concludes that the claimant's failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

**In the alternative, the administrative law judge concludes that even if the appeal was deemed timely filed, the claimant's request to backdate the claim would be denied.**

Iowa Code section 96.6(1) provides:

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

Effective Wednesday, July 12, 2017, for claims effective July 16, 2017:

Iowa Admin. Code r. 871-24.2(1)h(1) and (2) provide:

**Procedures for workers desiring to file a claim for benefits for unemployment insurance.**

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

*h.* Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

1. The failure of the department to recognize the expiration of the claimant's previous benefit year;
2. The claimant filed an interstate claim against another state which has been determined as ineligible.

While the claimant has presented reasons for backdating that may have previously been considered “sufficient grounds” to grant the request, after an agency and legislative rulemaking process, effective July 12, 2017, Iowa Admin. Code r. 871-24.2(1)h(1) and (2) allows backdating for only the two reasons cited above. Neither of those reasons applies in this case. Accordingly, the backdating request must be denied.

**DECISION:**

The January 16, 2018 (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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