

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RON A WALKER
Claimant

APPEAL NO. 09A-UI-18753-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 11/15/09
Claimant: Appellant (1)

Section 96.3-4 – Whether the Number of Dependents is Correct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Ron A. Walker filed an appeal from a monetary determination dated November 19, 2009 which listed the claimant's number of dependents as two. After due notice was issued, a hearing was held by telephone on January 23, 2010. The claimant participated personally.

ISSUE:

At issue in this matter is whether the appeal filed herein was timely.

FINDINGS OF FACT:

The administrative law judge having considered all of the evidence in the record, finds: Mr. Walker opened his claim for benefits on line after determining that he should have claimed an additional dependent due to a "shared custody agreement." Mr. Walker attempted to contact the Agency but was unable to make contact due to the crush of incoming calls to the location. The following week Mr. Walker went to the Agency personally, however, at that time he had exceeded the ten-day statutory limitation on making changes on the monetary determination.

REASONING AND CONCLUSIONS OF LAW:

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, subsection 10, 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 record in this case shows that more than ten calendar days elapsed between the time Mr. Walker received notice of the number of dependents claimed on his monetary determination and the time that he attempted to initiate a change in the number of dependents. Mr. Walker did not initially attempt to go to one of the area Claims Centers personally but relied upon contact via telephone. Mr. Walker also had the option of initiating his appeal on the monetary determination by depositing his appeal with the U.S. Postal Service obtaining a postmark for the appeal prior to the expiration of the ten-day time limit.

The question in this case thus becomes whether Mr. Walker 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6-2.

DECISION:

The representative's decision dated November 19, 2009 is hereby affirmed. The Agency decision reflected upon the claimant's monetary determination remains in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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