

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NOAH O'TOOLE
Claimant

APPEAL 17A-UI-07736-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/02/17
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(4)a-c – Monetary Eligibility and Subsequent Benefit Year

STATEMENT OF THE CASE:

Noah O'Toole (claimant) filed an appeal from the July 14, 2017, reference 01, unemployment insurance decision that denied benefits because of a lack of at least eight times the prior claim year's weekly benefit amount (WBA) in insured wages during or after the prior claim year. After due notice was issued, a hearing was held on August 16, 2017. The claimant participated. Department's Exhibits D1 and D2 were received.

ISSUES:

Is the appeal timely?

Did the claimant earn insured wages of at least eight times the prior claim year's WBA during or after the previous benefit year to become eligible for a second benefit year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's WBA in the prior claim year effective July 3, 2016 was \$435.00. The claimant received notice in April, 2017 from Iowa Workforce Development (IWD) that he would need to earn \$250.00 in insured wages to remain eligible for benefits in a second claim year. After the Iowa legislature amended Iowa law to require eight times the WBA to be eligible in the second claim year, a letter was sent to all claimants notifying them of the change in law. The claimant received this notification from IWD at the end of May, 2017.

The claimant began working part-time for Strategic Growth Capital in the second quarter of 2017. He has earned \$377.00 during the second quarter of 2017, which ended on June 30, 2017. The claimant did not earn at least eight times the prior claim year's WBA in insured wages during or subsequent to the prior claim year beginning July 3, 2016.

A disqualification decision was mailed to the claimant's last known address of record on July 14, 2017. He received the decision within two to three days of the date of mailing. The decision

contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 24, 2017. The appeal was not filed until July 31, 2017, which is after the date noticed on the disqualification decision. The claimant delayed in filing the appeal because he did not believe the decision applied to him as he was receiving Training Extension Benefits. The claimant did not contact anyone at Iowa Workforce Development (IWD) about the decision until after July 24, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is not timely and, in the alternative, even if it was timely filed, he would not be eligible to receive benefits during the subsequent benefit year.

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

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 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 claimant's failure 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 appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to alter the decision that was appealed. 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, even if the claimant's appeal was timely filed, he would not be eligible for benefits in the second claim year.

Iowa Code section 96.4(4)a and c provide:

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, 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 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.

...

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

Because the claimant did not demonstrate an ongoing connection to the labor market by earning at least eight times the prior claim year's WBA in insured wages during or subsequent to the claim year beginning July 3, 2016, he would not be eligible to receive benefits during the current claim year beginning July 2, 2017. The claimant's argument that he should be grandfathered in under the \$250.00 requirement and that one month's notice of the change was inadequate is not persuasive. The Iowa legislature determined the amendment to the code would be effective July 2, 2017 and did not provide a provision that allowed anyone to be grandfathered in under the old requirements once the amendment took effect.

DECISION:

The July 14, 2017, reference 01, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn