

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA A NANK
Claimant

APPEAL NO. 08A-UI-03421-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/20/08 R: 04
Claimant: Appellant (2-R)**

871 IAC 25.16 – Income Tax Offset
871 IAC 25.16(3) – Request Tax Income Split
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Brenda Nank (claimant) appealed a representative's April 1, 2008 decision (reference 04) that concluded her joint or commonly owned Iowa income tax refund would not be divided proportionately because her request was not filed in a timely manner. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on April 22, 2008. The claimant participated personally. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on February 20, 2008. She did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 1, 2008. On March 20, 2008, the claimant discovered the decision by looking online and calling the local Workforce Development Office. The claimant prepared her appeal and placed it on her mailbox for the postman to collect on March 20, 2008. The appeal was not postmarked until March 27, 2008, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 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 Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant's appeal shall be accepted as timely.

The issue of dividing the Iowa income tax refund proportionately is remanded for determination.

DECISION:

The representative's April 1, 2008 decision (reference 04) is reversed. The claimant's appeal is timely. The claimant's appeal shall be accepted as timely. The issue of dividing the Iowa income tax refund proportionately is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw