

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN L DESTIVAL
Claimant

APPEAL NO. 09A-UI-11610-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/19/09
Claimant: Appellant (1)

871 IAC 24.9(1) – Monetary Determinations
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed from the July 24, 2009 monetary record that set the number of dependents at three. After due notice was issued, a hearing was held by telephone conference call on August 27, 2009. The claimant did participate.

ISSUE:

The issue is whether Mr. Destival filed a timely appeal of his monetary determination.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds a monetary determination of record was mailed to the claimant's last-known address of record on July 24, 2009. The claimant received the monetary determination record. The record contained a warning that an appeal must be postmarked or received by the Appeals Section within ten days of the date of the mailing. The appeal was not received until August 13, 2009 which is after the expiration of the ten-day appeal period.

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.

Ten calendar days for appeal begins running on the mailing date. The determination date found on the monetary determination unless otherwise corrected is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981) and Johnson v. Board of Adjustment, 239 N.W. 2d 873, 92 A.L.R.3d 304 (Iowa 1976). This would apply to the date of the monetary determination record as well.

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date Mr. Destival's appeal was filed. The Supreme Court has declared that there is a mandatory duty to file appeals from determinations within the time allowed 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 Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show the notice was invalid. 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. 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 failure to file a timely appeal within the time prescribed by the Iowa Employment Security Act was not due to any agency error or misinformation, delay or other action by the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2) and the administrative law judge lacks the jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The July 24, 2009, monetary determination record is affirmed. The appeal in this case was not timely and the report setting the number of dependents at three remains in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs