

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE C HOAMBRECKER
Claimant

APPEAL 20A-UI-00294-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/01/19
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.3(4) Payment – Benefit determination, dependents
Iowa Admin. Code r. 871-24.9(1)b – Monetary determination

STATEMENT OF THE CASE:

On January 9, 2020, Steve Hoambrecker (claimant/appellant) filed an appeal from the December 20, 2019 (reference 02) unemployment insurance decision that determined claimant was not eligible to claim his wife as a dependent on his unemployment insurance claim.

A telephone hearing was held on January 29, 2020, at 1 p.m. The parties were properly notified of the hearing. Claimant participated personally.

Official notice was taken of the administrative record.

ISSUE(S):

Is the appeal timely?

Did the claimant make a timely request to change the number of dependents?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

A monetary determination was issued December 5, 2019. The monetary determination listed the number of dependents as zero. The monetary determination indicated a request to add a dependent must be made by December 15, 2019. Claimant did not make a request until December 18, 2019. He did not make this request because he did not closely read the determination, realize he had made an error, and respond accordingly until after the deadline to make the request. The monetary determination was mailed to the above address. This is the correct mailing address for claimant.

An unemployment insurance decision was issued December 20, 2019, informing claimant that he was not eligible to claim his wife as a dependent on his unemployment insurance claim because

he did not request to add her by December 15, 2019. The decision indicated it would become final unless an appeal was postmarked or received by December 30, 2019. Claimant was out of town from December 21, 2019 until January 8, 2020. He filed an appeal the day after he returned. The unemployment insurance decision was mailed to the above address. This is the correct mailing address for claimant. Prior to leaving, claimant had notified the department that he would be out of town until January 8, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the December 20, 2019 (reference 02) unemployment insurance decision that determined claimant was not eligible to claim his wife as a dependent on his unemployment insurance claim is **AFFIRMED**.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871—24.9(1)b provides:

The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b)
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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. IDJS*, 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. IDJS*, 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. 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.

Claimant did not appeal the unemployment insurance decision until January 9, 2020, because he was out of town for approximately three weeks and did not check his mail during that time. As set forth above, his delay was not due to error of the department or the United States postal service. Claimant chose to go out of town for several weeks, apparently without any system in place to check his mail or to otherwise see to any important correspondence. For this reason, the administrative law judge finds claimant's appeal was untimely.

However, even assuming claimant's appeal was timely, this administrative law judge would find claimant did not have good cause for failing to timely request a correction of the monetary record. Claimant did not timely make this request because he failed to closely read the determination, realize he had made an error, and respond accordingly until after the deadline. While the administrative law judge is sympathetic to claimant and understands this was a good faith error, it is claimant's responsibility to diligently examine important documents received from the department and request assistance from the department if there is confusion. Again, this delay was not due to error of the department or the United States postal service.

The administrative law judge finds claimant had a reasonable opportunity to respond to the monetary record and the unemployment insurance decision and failed to do so in a timely manner. This delay was not due to error of the department or the United States postal service. As such, his request to correct the monetary record and to appeal the related unemployment insurance decision are not timely.

DECISION:

The December 20, 2019 (reference 02) unemployment insurance decision that determined claimant was not eligible to claim his wife as a dependent on his unemployment insurance claim is AFFIRMED.

Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Decision Dated and Mailed

abd/scn