

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH GRAHAM
Claimant

APPEAL NO: 20A-UI-14521-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(4)a-c – Monetary Eligibility
Iowa Code § 96.3(4) – Determination of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 28, 2020, corrected monetary record. After proper notice, a telephone hearing was conducted on January 12, 2021. The hearing was held together with Appeals 20A-UI-14522-JC-T, 20A-UI-14523-JC-T, and 20A-UI-14524-JC-T. The claimant participated. Official notice of the administrative records was taken. Department Exhibit D-1 was admitted.

ISSUES:

Is the appeal timely?
Is the corrected monetary record dated August 28, 2020 correct?
Did the claimant timely appeal the monetary determination?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 12, 2020.

The claimant's monetary record originally established a weekly benefit amount of \$518.00 per week. The initial monetary record included wages from Scottish Rite Park, and claimant did not work for the company. Claimant did not inquire about the wages or employer at the time or contact IWD for guidance.

A corrected monetary record was mailed to claimant on August 28, 2020. Claimant received the updated record, which contained appeal rights on the backside. The prescribed period to appeal is ten days from the date of mailing. The corrected monetary record reduced her weekly benefit amount to \$263.00 because wages were previously listed under her social security number, for employers she did not actually work. Claimant's maximum benefit amount was reduced to \$4,913.66.

When claimant received the updated monetary record, with the excluded wages, she did not immediately inquire or contact IWD. She did not file an appeal. The wages listed on the monetary record for NU Clips Inc. and Sunnybrook Living Care Center are correct.

Claimant filed her appeal after receiving overpayment statements from IWD. Claimant also contacted the Scottish Rite Park and confirmed she was not an employee and someone was using her social security number. Claimant filed her appeal on November 5, 2020. See Department Exhibit D-1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is untimely.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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, subsections 10 and 11, 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 issued, 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 ten calendar days for appeal begins running on the issuing 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 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. 871-24.9(1)(b).

The record in this case shows that more than ten calendar days elapsed between date of the monetary record, August 28, 2020, and the appeal being filed on November 6, 2020. An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b). No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). The claimant's late appeal *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).

In this case, the claimant did not file a timely appeal to the August 28, 2020 monetary record establishing \$263.00 as her weekly benefit amount. As such, the monetary record remains in effect. Even if the appeal was timely filed, the monetary record is correct. Claimant is not entitled to a higher weekly benefit amount that includes wages she did not earn. Accordingly, the August 28, 2020 monetary record is affirmed.

DECISION:

The claimant did not file a timely appeal. The August 28, 2020 monetary record is correct and affirmed. The claimant's weekly benefit amount is \$263.00. Claimant's maximum benefit amount was reduced to \$4,913.66.

Note to Claimant: If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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February 1, 2021
Decision Dated and Mailed

jlb/mh