

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBRA A CHADOURNE
Claimant

APPEAL NO: 06A-UI-08923-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/06/06 R: 02
Claimant: Appellant (5)**

Section 96.6-2 - Timeliness of Request to Cancel Claim
871 IAC 24.2(4) – Timeliness of Request to Cancel Claim

STATEMENT OF THE CASE:

Debra A. Chadourne (claimant) appealed a representative's decision issued August 28, 2006 (reference 02) which denied the claimant's request to cancel her claim as untimely. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on September 21, 2006. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Based on a review of the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's request to cancel her claim timely?

FINDINGS OF FACT:

The claimant physically filed an initial claim for unemployment insurance benefits at her local Agency office on August 9, 2006. A notice of claim was mailed to the claimant's most recent employer on August 10, 2006. The claimant did not file a written request to cancel her claim until she took a note to her local Agency office on August 24, 2006. She has not filed any weekly claims since establishing her claim.

REASONING AND CONCLUSIONS OF LAW:

The determinative issue in this case is whether the claimant timely made a request to cancel her claim.

871 IAC 24.2(4)a and c provide:

Cancellation of unemployment insurance claim.

a. A request for cancellation of an unemployment insurance claim may be made by the individual in writing and be directed to the Unemployment Insurance Service Center, Department of Workforce Development, P.O. Box 10332, Des Moines, Iowa 50306. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made.

c. Cancellation requests within the ten-day protest period. The claims section, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.

(2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

The “ten-day protest period” is the ten-day period following the mailing of the notice of claim to the employer, plus any additional days necessary so that the period does not end on a Saturday, Sunday or legal holiday. Iowa Code § 96.6-2; 871 IAC 24.8(2); 871 IAC 24.9(2). Thus, in this case the ten-day protest period ended on Monday, August 21, 2006.

Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative’s decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit for the employer to file a protest or for the claimant to cancel a claim after the notice of claim has been mailed to the employer. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests and cancellation requests are considered filed when postmarked, if mailed, otherwise when they are received by the Agency. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the claimant was deprived of a reasonable opportunity to cancel her claim 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 claimant did have a reasonable opportunity to file a timely cancellation request.

871 IAC 24.35(2) provides in pertinent part:

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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

The claimant has not shown that the delay for not complying with the jurisdictional time limit was due to department error or misinformation or delay or other action of the Agency or the United States Postal Service. Since the claimant filed her request for cancellation late without any legal excuse, she did not file a timely request. Since the administrative law judge concludes that the request was not timely filed pursuant to Iowa Code § 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to whether the request provided sufficient grounds for cancellation of the claim, regardless of the merits of her request. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

In practical effect, however, it is still within the claimant's control as to whether she pursues her current claim or not. She can surely in effect abandon her claim by making no weekly claims, as it appears she has done; even at this point sufficient time has passed with no activity on the claim that she would need to make an additional or reopened claim in order to reactivate her eligibility. 871 IAC 24.1(25)b(2), (18). Should that occur, for better or for worse she simply will be tied to her current claim year base period and weekly benefit amount determination until the expiration of her current claim year as of August 4, 2007.

DECISION:

The representative's August 28, 2006 decision (reference 02) is modified with no effect on the parties. The claimant's request to cancel her claim in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/cs