

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDI K POTTER
Claimant

APPEAL NO: 14A-UI-06023-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/30/14

Claimant: Appellant (2)

871 IAC 24.2(1)a & h(1) & (2) - Backdating
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Brandi K. Potter (claimant) appealed a representative's May 21, 2014 decision (reference 04) that denied the claimant's request to backdate the claim prior to March 30, 2014. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on August 5, 2014. The claimant participated in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely? Should the claimant's request to back date her claim be granted?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on May 21, 2014. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 31, 2014. The appeal was not received and treated as filed until June 11, 2014, which is after the date noticed on the disqualification decision. The claimant had previously submitted an appeal by fax on or about May 30, 2014.

The claimant had a temporary separation from employment through layoff from work effective the week beginning March 16, 2014. She did not get a claim for unemployment insurance benefits established until the week of March 30, 2014. The delay in filing the claim was due to that she had attempted to establish a claim on line during the week of March 16 and had not been aware that her attempt had not been successful.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins running on the mailing 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa 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 not 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 Law was due to Agency error or misinformation or delay or other action pursuant to Rule 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

Agency rule 871 IAC 24.2(1)h provides that claims for unemployment insurance benefits are ordinarily effective on the Sunday of the calendar week in which the individual files the initial claim. For good cause, a claim may be backdated. The administrative law judge finds good cause in that the claimant made a good faith attempt to establish a claim on line during that week. The claim should be backdated to March 16, 2014.

DECISION:

The appeal in this case is treated as timely. The representative's May 21, 2014 decision (reference 04) is reversed. The claimant's request to backdate her claim is allowed.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs