

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA L HALFERTY
Claimant

APPEAL NO: 10A-UI-17156-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/07/10
Claimant: Appellant (2)**

Section 96.3-4 - Number of Dependents
Section 96.6-2 - Timeliness of Appeal – Monetary Determination

STATEMENT OF THE CASE:

Melissa L. Halferty (claimant) appealed a representative's decision issued on December 10, 2010 (reference 01) that denied the claimant request to modify the number of dependents on her claim. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on January 27, 2011. The claimant participated in the hearing. 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 request to amend her monetary determination regarding the number of dependents timely? If so, should the number of dependents be changed?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective November 7, 2011. On November 15, 2011 an on-line monetary determination was issued on which the claimant was attributed with three dependents; it was presumably mailed to the claimant's last-known address of record. The claimant did not receive the determination; the only determination she received was a corrected copy mailed to her on December 21, 2010. By December 3, 2010, the claimant had already determined by investigating the amounts of her benefits that she was only being credited with three dependents; on that date she filed a written statement indicating that the proper number of dependents on her claim should be four. She specifically identified three minor children and her spouse, who did not work outside of the home, as dependents.

REASONING AND CONCLUSIONS OF LAW:

The initial issue in this case is whether the claimant timely appealed the monetary determination.

Unless the claimant or other interested party files an appeal from an Agency representative's monetary determination or decision within ten calendar days after the representative's monetary determination or decision is mailed to the party's last-known address, the determination or

decision is final. Benefits shall then be paid or denied in accordance with the representative's determination or decision. Iowa Code § 96.6-2.

The ten calendar days for appeal begins running on the mailing date. The date indicated on the determination 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 terminations 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, as she did not receive the initial monetary determination.

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 of the United States Postal Service pursuant to 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).

The number of dependents claimed for unemployment insurance purposes can affect the claimant's total eligibility.

Iowa Code § 96.3-4 provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage.
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

A "dependent" is defined to include an individual who has been or could have been claimed for the preceding tax year on the claimant's income tax return, and a spouse who does not earn more than \$120.00 in gross wages in one week. 871 IAC 224.2(1)(8). The claimant's unemployment insurance claim shall reflect the claimant has four dependents.

DECISION:

The December 10, 2010 (reference 01) decision is reversed. The appeal from the monetary determination is treated as timely. The claimant's unemployment insurance claim shall be amended to show four dependents.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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