

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID E HUNKINGS
Claimant

APPEAL NO. 07A-UI-03011-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/04/07 R: 12
Claimant: Appellant (1)**

Section 96.6-2 - Timeliness of Appeal from a Monetary Decision

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 19, 2007, reference 01, that concluded that his monetary eligibility decision was mailed on February 6, 2007, and became final. A telephone hearing was held on April 10, 2007. The claimant participated in the hearing. Exhibits A-1 and A were admitted into evidence at the hearing.

ISSUE:

Did the claimant file a timely appeal from a monetary eligibility decision?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the claimant's last-known address of record on February 6, 2007. The decision concluded the claimant's weekly benefit amount was \$347.00 based on one dependent and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section within ten calendar days.

The claimant received the decision within the ten-day period for appealing the decision. He did not notice the number of dependents recorded on the decision was one. He filed a written request on March 19, 2007, to add two additional dependents to his claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal of the decision establishing his weekly benefit amount based on one dependent.

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . Unless 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.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file 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 claimant filed his appeal late because he did not notice that there was a mistake on the decision that established his weekly benefit amount of \$347.00. The claimant had a reasonable opportunity to file a timely appeal.

The failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the appeal was not timely filed, the decision establishing his weekly benefit amount is final and cannot be changed.

DECISION:

The unemployment insurance decision dated March 19, 2007, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw