

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHEILA M TRENT**  
Claimant

**APPEAL NO. 10A-UI-14583-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 03/28/10**  
**Claimant: Appellant (2-R)**

871 IAC 24.7(3) - Substituted Quarters  
Iowa Code Section 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 26, 2010, reference 01, decision that denied benefits and that denied the claimant's request to substitute calendar quarters before the base period. After due notice was issued, a hearing was held on December 10, 2010. Claimant participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the agency's administrative record of quarterly wages reported for the claimant and of the Agency administrative file materials considered by the workforce representative in making the July 26, 2010, reference 01 decision.

**ISSUES:**

Whether the claimant is eligible to substitute calendar quarters before her base period in order to become monetarily eligible for unemployment insurance benefits.

Whether the claimant's appeal was timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 26, 2010, Iowa Workforce Development mailed a copy of the July 26, 2010, reference 01 decision to the claimant's last-known address of record. The claimant received the decision in a timely manner prior to the deadline for appeal. The decision carried an August 5, 2010 appeal deadline. On August 5, 2010, the claimant submitted her appeal by fax. Appeals Section records indicate that the claimant's two-page appeal was indeed received by fax on the afternoon of August 5, 2010. The Appeals Section then misplaced the claimant's appeal materials. The claimant re-faxed her appeal on October 12, 2010. This time, not only was the appeal received, but the appeal was docketed.

The claimant was employed by United Parcel Service on a full-time basis from 1999 and last performed work for the employer on October 30, 2008. In 2006, the claimant broke her ankle at work. The claimant underwent surgery on her ankle in February 2007. The claimant subsequently returned to work, but continued to experience problems with her ankle. In October 2008, the claimant requested to see a doctor. Claimant was seen by a doctor and referred to physical therapy. In December 2008, the physical therapist concluded there was nothing further they could do for the claimant. Claimant was then referred for evaluation by a new doctor. That doctor diagnosed an injury that required another surgery. The claimant continued off work. Effective January 1, 2010, the claimant was released to return to work with a 50-pound permanent weight lifting restriction. Claimant contacted the employer about returning to work and, on January 4, 2010, the employer advised the claimant she would not be allowed to return to work with the lifting restriction.

The claimant established a claim for unemployment insurance benefits that was effective March 28, 2010. This was after the claimant had ceased receiving workers' compensation benefits. Between September 2006 and September 9, 2009, the claimant, by and large, received workers' compensation benefits for temporary total disability at a weekly rate of \$632.00. The claimant then received an additional 24 weeks of workers' compensation benefits for permanent partial disability, at a rate of \$632.03 per week, through March 18, 2010. The claimant consistently received weekly workers' compensation benefits of \$632.03 from the end of October 2008 until March 18, 2010.

The claimant's base period, for purposes of the unemployment insurance claim that was effective March 28, 2010, consists of the fourth calendar quarter of 2008 and the first, second, and third calendar quarter of 2009. The employer reported quarterly wages to workforce development for the fourth quarter of 2008 and the first and second quarter of 2009. For the fourth quarter of 2008, the employer reported paying the claimant wages of \$12,908.16. For the first quarter of 2009, the employer reported paying the claimant \$228.16 in wages. For the second quarter of 2009, the employer reported paying the claimant wages of \$2598.30. The employer reported no wages for the claimant for the fourth quarter of 2009.

For the quarters immediately preceding the base period, the employer reported wages for the claimant as follows. For the fourth quarter of 2007, the employer reported paying the claimant wages of \$17,831.33. For the first quarter of 2008, the employer reported paying the claimant wages of \$15,175.90. For the second quarter of 2008, the employer reported paying the claimant wages of \$14,272.19. For the third quarter of 2008, the employer reported paying the claimant wages of \$17,460.05.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge will first address the issue of the timeliness of the claimant's appeal.

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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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, subsection 10, 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 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. 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

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 871 AC 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 871 IAC 24.35(1)(b).

The weight of the evidence in the record establishes that the claimant filed a timely appeal on August 5, 2010, but that the Appeals Section lost the claimant's appeal document. The administrative law judge has authority to rule on the merits of the appeal.

Iowa administrative code rule 871 IAC 24.7(3) provides as follows:

24.7(3) The department shall make an initial determination of eligibility for unemployment insurance benefits. If the individual has no wage records or lacks qualifying wage requirements, the department shall substitute three or more calendar quarters of the base period with those three or more consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation benefits or indemnity insurance benefits. The qualifying criteria for substituting quarters in the base period are that the individual:

a. Must have received workers' compensation benefits under Iowa Code chapter 85 or indemnity insurance benefits for which an employer is responsible during the excluded quarters, and

- b. Did not work in and receive wages from insured work for:
- (1) Three or more calendar quarters in the base period, or
  - (2) Two calendar quarters and lacked qualifying wages from insured work during another quarter of the base period.

Using the claimant's base period wages, the claimant would not meet the minimum earnings requirements to be eligible for unemployment insurance benefits under Iowa Code section 96.4(4), which requires that the claimant's total base period wages equal at least one and one half times the wages paid to the claimant during the highest earning quarter of the base period. Plus, the claimant meets the initial threshold requirement for substitution of quarters.

The evidence further indicates that the claimant received workers' compensation benefits consistently throughout the four quarters contained in the base period. Thus, the claimant meets the second requirement for substitution of quarters.

The evidence establishes that the claimant did not work in and had no wages during the third quarter of 2009. The weight of the evidence also indicates that the claimant *did not work in* the first or second quarter of 2009, despite the fact that the employer reported wages to workforce development for those quarters. The employer has failed to appear for the hearing and present evidence to the contrary.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant is eligible for substitution of calendar quarters. The administrative law judge concludes that the claimant's wages for the first, second and third quarter of 2008 should be substituted for the first, second, and third quarter of 2009 to make her monetarily eligible for unemployment insurance benefits. The claimant would still need to meet all other eligibility requirements.

This matter is remanded to the Claims Division for redetermination of the claimant's eligibility for benefits consistent with the substitution of calendar quarters authorized by this decision.

**DECISION:**

The Agency representative's July 26, 2010, reference 01, is reversed. The claimant is eligible for substitution of calendar quarters. The claimant's wages for the first, second and third quarter of 2008 should be substituted for the first, second, and third quarter of 2009 to make her monetarily eligible for unemployment insurance benefits. The claimant would still need to meet all other eligibility requirements.

This matter is remanded to the Claims Division for redetermination of the claimant's eligibility for benefits consistent with the substitution of calendar quarters authorized by this decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs