

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MARILYN T KENNEDY**  
Claimant

**APPEAL NO. 21A-UI-23651-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 10/03/21  
Claimant: Appellant (4)**

Iowa Code Section 96.3(4) – Monetary Record

**STATEMENT OF THE CASE:**

The claimant, Marilyn Kennedy, filed a late appeal from the monetary determination that Iowa Workforce Development mailed to the claimant on October 6, 2021. After due notice was issued, a hearing was held on December 14, 2021. The claimant participated. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative record: the October 6, 2021 monetary determination, DBRO, and WAGE-A.

**ISSUES:**

Whether the claimant made a timely appeal from the October 6, 2021 monetary determination. Whether the monetary determination correctly stated the number of dependents, the weekly benefit amount, and was otherwise accurate.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Marilyn Kennedy, established an original claim for benefits that was effective October 3, 2021. The claimant believed she had entered dependent information when she establishes the claim online. The claimant has six minor children, all of whom reside with the claimant and her husband. The claimant's husband is gainfully employed outside the home. The eldest children are 11 years old. The youngest are six months old. The claimant also has a six-year-old and a nine-year-old. The claimant claimed the eldest four children as dependents on her 2020 income tax return. The two youngest were not born until 2021 and therefore could not have been included on the 2020 tax return as dependents.

On October 6, 2021, Iowa Workforce Development mailed the monetarily determination (green paper) to the claimant's Altoona address of record. The monetary record indicated the claimant number of dependents on the claim as zero. The monetary record indicated a \$505.00 weekly benefit amount, based on zero dependents, and provided a \$13,130.00 maximum benefit amount. The monetary record correctly stated the base period quarterly wages. The monetary determination included a statement that the monetary determination would be final unless an

appeal was filed within 10 days of the mailing date of the monetary determination. That deadline was October 16, 2021.

The claimant did not receive the monetary determination until after the October 16, 2021 deadline for challenging the document. The claimant had moved to the Altoona address of record on September 26, 2021. The home was newly constructed. After a number of weeks, the claimant realized she was not receiving any mail. On or about October 21, 2021, the claimant went to the Altoona post office to inquire about her mail. At that time, the claimant learned the United States Postal Service had issued a hold mail delivery to the address at the time construction commenced and that the post office was continuing to hold her mail. The October 6, 2021 monetary record was included in the correspondence the post office was holding and that the post office provided to the claimant on or about October 21, 2021.

On October 25, 2021, the claimant drafted her appeal from the monetary record. The claimant mailed the appeal. The appeal is postmarked October 26, 2021.

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

Iowa Code section 96.3-4 provides for calculation of the weekly benefit amount as follows:

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.

Iowa Administrative Code rule 871-24.2 sets forth the procedure that a would-be unemployment insurance claimant must follow to establish a claim for benefits. Subrule (b)(8) sets forth the information the claimant must provide regarding the number of dependents and defines who counts, and does not count as a dependent:

(8) Number, name and relationship of any dependents claimed. As used in this subparagraph, "dependent" is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant, stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant's home as a member of the household for the whole year; cousin.

A "spouse" is defined as an individual who does not earn more than \$120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A "dependent" means an individual who has been or could have been claimed for the preceding tax year on the claimant's income tax return or will be claimed for the current income tax year. The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

The monetary determination shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record. Iowa Admin. Code r. 871-24.9(1)(b).

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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

Iowa Administrative Code Rule 871-24.35(2) provides, in relevant part:

Date of submission and extension of time for payments and notices.

(2) 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 division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is good cause to deem the claimant's October 26, 2021 late appeal a timely appeal from the October 6, 2021 monetary determination. The claimant did not receive the monetary determination until on or about October 21, 2021. The claimant did not have a reasonable opportunity to file an appeal by the October 16, 2021 deadline. The delay in the claimant's

receipt of the monetary determination, and the delay in the filing of the appeal, was attributable to the United States Postal Service holding the claimant's mail without notifying the claimant of the hold. The claimant filed her appeal within five days of learning of the mail hold and retrieving the correspondence.

The claimant is eligible for redetermination of the weekly benefit amount and correction of the number of dependents on the claim. The October 6, 2021 monetary determination incorrectly states the claimant's number of dependents as zero. The claimant has six minor dependent children and, therefore, is entitled to have her weekly benefit amount based on "4 or more" dependents. Because the weekly benefit amount is based on zero dependents, the weekly benefit amount is incorrectly stated on the monetary determination. The monetary determination correctly states the base period wages and the maximum benefit amount.

**DECISION:**

The claimant's appeal from the October 6, 2021 monetary determination was timely. The claimant is eligible to add her six dependent children to her claim and to have her weekly benefit amount redetermined accordingly. The monetary record correctly stated the base period wages and maximum benefit amount.



---

James E. Timberland  
Administrative Law Judge

January 18, 2022  
Decision Dated and Mailed

jet/kmj