

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL A WEBER
Claimant

APPEAL 21A-UI-24842-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/29/20
Claimant: Appellant (1)**

Iowa Code § 96.4(4)a-c – Monetary Eligibility and Subsequent Benefit Year
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant/Appellant, Michael A. Weber, filed an appeal from the January 28, 2021 (reference 02) unemployment insurance decision that denied benefits effective November 29, 2020 based on a finding claimant had not been paid insured wages during or after the previous claim year in an amount of at least eight times the weekly benefit amount of the previous claim year. After due notice was issued, a hearing was held on January 6, 2022. The hearing was held together with Appeals 21A-UI-24843-JC-T and 21A-UI-24844-JC-T. Claimant participated personally. Official notice was taken of the administrative record. Department Exhibit 1 was admitted.

ISSUES:

Is the appeal timely?

Did the claimant earn insured wages of at least eight times the prior claim year's weekly benefit amount during or after the previous benefit year to become eligible for a second benefit year?

FINDINGS OF FACT:

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

The claimant's state weekly benefit amount in the prior claim year effective December 1, 2019 is \$376.00. He wishes to claim benefits during a second claim year effective November 29, 2020.

The claimant did not earn at least eight times the prior claim year's weekly benefit amount in insured wages during or subsequent to the prior claim year beginning December 1, 2019. After claimant's employment ended with JCV Production Inc., he focused on self-employment, and did not earn insured wages of at least eight times his prior year's weekly benefit amount (\$376.00 x 8 = \$3,008.00).

An initial decision (reference 02) was mailed to the claimant/appellant's address of record on January 28, 2021. The decision contained a warning that an appeal must be filed by February 7, 2021. The decision also directed the appellant to call the customer service line for assistance. Appellant did the decision with the appeal period. Appellant filed the appeal on

November 4, 2021 (See Department Exhibit 1). The appeal was delayed because of misinformation from an IWD representative. Claimant filed his appeal on November 4, 2021 after receiving overpayment decisions dated November 2, 2021.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

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 Supreme 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The undisputed evidence is that the claimant's appeal was delayed due to *Agency error or misinformation* pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, it will be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for benefits for a second benefit year.

Effective July 2, 2017, Iowa Code section 96.4(4)a and c provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

When a claimant has drawn benefits in any benefit year, the claimant must during or subsequent to that year, work in and be paid wages for **insured** work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year. (Self-employment wages are not insured work.) To demonstrate an ongoing connection to the labor market, the claimant needs to earn eight times the WBA, or \$3,008.00, in insured wages after December 1, 2019, to be eligible for benefits in the claim he filed effective November 29, 2020.

Although the administrative law judge recognizes claimant's earnest and active search for work, because the claimant did not demonstrate an ongoing connection to the labor market by earning at least eight times the prior claim year's weekly benefit amount in insured wages during or subsequent to the claim year beginning December 1, 2019, he is not eligible to receive benefits during the current claim year beginning November 29, 2020.

DECISION:

The appeal is accepted as timely. The January 28, 2021 (reference 02) unemployment insurance decision that denied benefits effective November 29, 2020 based on a finding claimant had not been paid insured wages during or after the previous claim year in an amount of at least eight times the weekly benefit amount of the previous claim year is AFFIRMED.

If claimant does earn eight times the prior claim year's WBA in insured wages he may present evidence of that to IWD to determine eligibility.



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January 31, 2022
Decision Dated and Mailed

jlb/mh