

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A BRASE
Claimant

APPEAL NO. 15A-UI-04680-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/10/14
Claimant: Appellant (2)**

871 IAC 24.9 – Timeliness of Request to add Dependents
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the April 8, 2015, reference 01, decision that denied adding dependents. After due notice was issued, a hearing was held by telephone conference call on May 28, 2015. The claimant did participate.

ISSUE:

The issue is whether the appeal is timely and whether claimant's request to add dependents to this claim is timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A monetarily valid claim was filed on August 10, 2014. This determination became final on August 23, 2014 as no appeal was posted. The claimant appealed March 26, 2015 which is after the date required.

Claimant stated that his employer filed the original claim in this matter. Claimant did not aid the employer in filling out the documentation to be filed. When employer filed the claim, employer did not list any dependents for claimant. Claimant stated that he did not remember receiving documentation from IWD concerning the initial determination in this matter. Because he did not receive this documentation, claimant did not challenge the decision.

Claimant only missed one week of work after claimant's original claim. He did not miss any more weeks until a representative of IWD met with employees of John Deere in March, in anticipation of a planned layoff. At that time claimant realized that he was listed as having no dependents, and this incorrect statement had an effect on the amount of payment claimant received and was to receive.

Claimant immediately contacted IWD to attempt to change his number of dependents.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 calendar days for appeal begin 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).

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 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. 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.

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 any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was timely filed pursuant to Iowa Code Section 96.6-2, as claimant acted within ten days of being informed of the number of dependents he had.

Claimant is deemed to have appealed within ten days of gaining knowledge of the amount of dependents he had, as required by law. The prior determination of dependents is reversed and claimant shall be allowed to be listed as having three dependents from the date of the original claim.

DECISION:

The April 8, 2015, reference 01, decision is reversed. The request to add dependents was timely, and the claimant shall be deemed to have three dependents from the date of filing.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs