

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KERRI R CONWAY
Claimant

APPEAL 18A-UI-00734-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/17/17
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.2(1)g – Retroactive Benefits

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 4, 2018 (reference 01) unemployment insurance decision that found claimant was not eligible for retroactive benefits from December 17, 2017 through December 30, 2017. The claimant was properly notified of the hearing. A telephone hearing was held on February 9, 2018. The claimant participated personally. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Did claimant file a timely appeal?

FINDINGS OF FACT:

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

The claimant filed an initial claim for unemployment insurance benefits with an effective date of December 17, 2017. A decision denying her retroactive benefits for December 17, 2017 through December 30, 2017 was mailed to her on January 4, 2018. An appeal deadline of January 14, 2018 was listed on the decision. The decision further stated that if this date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. Claimant received the decision on January 12, 2018, prior to the appeal deadline. Claimant filed her appeal on January 17, 2018. She did not file her appeal on or before the January 16, 2018 deadline because she was waiting for a telephone call back from a supervisor at Iowa Workforce Development.

During the hearing, the claimant requested retroactive benefits from December 31, 2017 through January 13, 2018. There has been no initial investigation and determination regarding claimant's request for retroactive benefits from December 31, 2017 through January 13, 2018. This matter will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination regarding claimant's request for retroactive benefits from December 31, 2017 through January 13, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did not file a timely appeal.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

Iowa Admin. Code r. 871-24.35(1) provides:

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

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service 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 is 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.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

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.

While the claimant credibly testified that she was waiting to receive a telephone call back from a supervisor on January 16, 2018 and did not receive one, there was no misinformation or division error committed which prevented claimant from filing a timely appeal. The claimant has not shown any good cause for failure to comply with the jurisdictional time limit to file an appeal or that the delay was due to any agency error or agency misinformation. Iowa Admin. Code r. 871-24.35(2). The claimant has not shown that there was any delay or other action of the United States Postal Service that would establish good cause for her late appeal filing. *Id.* Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the issue on appeal. Iowa Code § 96.6(2).

DECISION:

The January 4, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant has failed to file a timely appeal and the unemployment insurance decision shall stand and remain in full force and effect.

REMAND: The claimant's request for retroactive benefits from December 31, 2017 through January 13, 2018, as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs