

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAM R ROTTMANN
Claimant

APPEAL NO. 11A-UI-05905-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/16/11
Claimant: Appellant (1)

871 IAC 24.2(4)c – Whether Claimant’s Request to Cancel His Claim was Timely

STATEMENT OF THE CASE:

After due notice a telephone hearing was held on May 17, 2011. Mr. Rottmann participated personally.

ISSUE:

The issue is whether the claimant filed a timely request to cancel his claim for benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Sean R. Rottmann filed a monetarily valid unemployment insurance claim with an effective date of January 16, 2011. On January 16, 2011, a monetary determination was mailed to the claimant’s address of record. As no appeal was postmarked or received regarding the monetary determination, the determination became final. Subsequently, on or about April 8, 2011, Mr. Rottmann attempted to cancel his claim effective January 16, 2011.

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 an appeal begins running on the mailing date. 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). This would apply to the date of monetary determinations as well.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1) appeals are considered filed when postmarked if mailed.

The record in this case shows that more than ten calendar days elapsed between the date when the appeal was mailed or filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from determination within the time limit 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 Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of the case show that the notice was invalid. The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. The record shows the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the failure to file a timely appeal within the time frame prescribed by the Iowa Employment Security Law was not due to any agency error or 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 § 96.6(2) and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The monetary determination dated January 16, 2011 is affirmed. The appeal in this case was not timely and the claimant's request to cancel his claim was properly denied.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs