

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUG J SCHREIBER**  
Claimant

**APPEAL NO. 07A-UI-08555-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/01/07 R: 04**  
**Claimant: Appellant (1)**

Section 96.6(2) – Timeliness of Appeals

**STATEMENT OF THE CASE:**

Doug Schreiber filed an appeal from a representative's decision dated August 27, 2007, reference 02, which denied his request to add dependents to his claim. After due notice was issued, a hearing was held by telephone on September 24, 2007. Mr. Schreiber participated personally.

**ISSUE:**

At issue in this matter is whether Mr. Schreiber made a timely request to add dependents.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: A monetary determination was mailed to Mr. Schreiber's last-known address of record on July 5, 2007. He received the determination, which indicated zero dependents on his claim. The determination contained a warning that an appeal must be postmarked or received by the Appeals Section within ten days of the date on which the determination was mailed.

Mr. Schreiber did not dispute the monetary determination until August 21, 2007 when he asked to have dependents added. When he initially filed for benefits, he believed the question regarding dependents referred to the number of dependents he claimed on his W-4 form when employed. The "Facts for Workers" booklet he would have received after filing his claim advised that the number of dependents claimed would be considered in determining the weekly benefit amount he was entitled to receive.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 begins running on the mailing date, July 5, 2007 in the case at hand. The record in this case shows that more than ten calendar days elapsed between the date on which the monetary determination was mailed and the date on which Mr. Schreiber requested to add dependents. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals 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 have a reasonable opportunity to file a timely appeal from the monetary determination. The administrative law judge appreciates that Mr. Schreiber misunderstood the context in which the term "dependent" was used when he completed his claim for benefits. However, the written materials provided after he filed should have put him on notice that the number of dependents claimed could effect the amount of his weekly benefits.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not 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 request to add dependents was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to change the monetary determination. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The representative's decision dated August 27, 2007, reference 02, is hereby affirmed. The appeal from the July 5, 2007 monetary determination was not timely and the determination remains in effect.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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