

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RYAN J KARGEL
Claimant

APPEAL 20A-UI-00229-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/08/19
Claimant: Appellant (1-R)**

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

STATEMENT OF THE CASE:

On January 7, 2020, Ryan J. Kargel (claimant) filed an appeal from the December 18, 2019, reference 02, unemployment insurance decision that denied benefits because of a lack of at least eight times the prior claim year's weekly benefit amount (WBA) in insured wages during or after the prior claim year. After due notice was issued, a telephone hearing was held on January 28, 2020 and consolidated with the hearing for appeal 20A-UI-00228-SC-T. The claimant participated personally. Croell, Inc. (employer) participated through Plant Manager Kurt Treloar. The Department's Exhibits D1 through D3 were admitted into the record. The administrative law judge took official notice of the claimant's claim and wage histories.

ISSUE:

Is the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed an original claim for benefits effective December 9, 2018 and his weekly benefit amount was \$573.00. The claimant filed weekly claims for benefits from December 9 through the week ending April 6, 2019. The claimant's wage history shows that in the first quarter of 2019, the employer reported gross wages in the amount of \$1,787.00 and, in the second quarter, gross wages in the amount of \$2,986.00. While filing his weekly claim for benefits, the claimant reported a total of \$287.00 in gross wages earned for the first quarter of 2019. Whether the claimant has underreported wages has not yet been investigated by Investigations and Recovery.

The disqualification decision was mailed to the claimant's last known address of record on December 18, 2019. The mail was delivered to his mailbox within seven days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 28. The appeal was not filed until January 7, 2020, which is after the deadline on the decision, because the claimant is busy caring for his sick wife and six children.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

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. Bd. 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant filed the appeal after the deadline due to personal issues. He has not established that the failure to file a timely appeal was due to any error by or misinformation from Iowa Workforce Development or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely file, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The December 18, 2019, reference 02, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND:

Whether the claimant underreported wages earned while making his weekly claims during the claim year effective December 9, 2018 is remanded for an investigation and unemployment insurance decision with appeal rights.



Stephanie R. Callahan
Administrative Law Judge

February 3, 2020
Decision Dated and Mailed

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