

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALD J STICE
Claimant

APPEAL 18A-UI-00002-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 11/26/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 15, 2017 (reference 01) unemployment insurance decision that denied his request for retroactive benefits for the period of November 26, 2017 through December 9, 2017. The claimant was properly notified of the hearing. A telephone hearing was held on January 22, 2018. The claimant participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Did claimant file a timely appeal?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for unemployment insurance benefits effective November 26, 2017. On December 13, 2017, claimant contacted Iowa Workforce Development ("IWD") to request retroactive benefits for the two-week period beginning November 26, 2017 and ending December 9, 2017.

On December 15, 2017, an Unemployment Insurance Decision was mailed to claimant at his current address of record. This decision found that the claimant's request for retroactive benefits was denied. The decision further stated "this decision becomes final unless an appeal is postmarked by 12/25/17, or received by Iowa Workforce Development Appeals Bureau by that date."

The decision further stated "[i]f this date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day." December 25, 2017 was a legal holiday and the claimant's appeal period was extended to the next working day, which was December 26, 2017. Claimant did not file his appeal prior to the December 26, 2017 deadline.

On December 28, 2017, claimant had a fact-finding interview with an IWD representative regarding his separation from employment with The Hon Company. Claimant contacted IWD

the following day regarding filing an appeal to the December 15, 2017 decision and was told by an IWD representative that the appeal deadline included working days and not calendar days. Claimant then filed an appeal online on December 29, 2017 regarding the denial of his request for retroactive benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is not timely. As such, the administrative law judge does not have jurisdiction to issue a decision regarding claimant's request for retroactive benefits.

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.

An appeal may be considered timely if it is established to the satisfaction of the division that the delay in submission of the appeal was due to division error or misinformation or due to delay or other action of the United States postal services. Neither of those two situations have been met in this case.

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 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 his late appeal filing. *Id.*

Claimant received the decision on December 20, 2017, which was prior to the appeal period expiring. Claimant only received misinformation from IWD *after* the appeal period had expired, on December 29, 2017.

Therefore, his delay in filing his appeal was not due to agency error or misinformation. As such, 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).

Claimant is urged to review information in the Unemployment Insurance Benefits Handbook at: https://www.iowaworkforcedevelopment.gov/sites/search.iowaworkforcedevelopment.gov/files/documents/ClaimantHandbook_2017-18.pdf

DECISION:

The December 15, 2017 (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.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs