

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN D BIELECKI
Claimant

APPEAL NO. 07A-UI-11809-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/04/07 R: 02
Claimant: Appellant (1R)**

Iowa Code § 96.3(4) – Determination of Benefits
871 IAC 24.9(1)b - Dependents

STATEMENT OF THE CASE:

The claimant appealed from the December 14, 2007, reference 01, representative's decision that found claimant's appeal of the November 14, 2007 monetary record that set the number of dependents as three and the effective date of the claim as November 11, 2007. After due notice was issued, a hearing was held by telephone conference call on January 11, 2008. The claimant participated. The administrative law judge took judicial notice of the administrative record.

ISSUE:

The issues are whether claimant's appeal from the monetary record is timely and if he may add another dependent to the claim.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A corrected monetary record was mailed to the claimant's last-known address of record on November 14, 2007. The claimant received the record and first sought to correct the monetary record on November 27, 2007, one day after the appeal period expired (November 24 was a Saturday so the appeal deadline was automatically extended to Monday, November 26, 2007). He then sought to add a dependent to his claim on December 7, 2007.

There is a discrepancy in the administrative record about the effective date of the claim. The representative's decision references November 4, 2007 but the monetary record indicates it is November 11, 2007. Claimant testified that a local office representative calculated his severance pay to determine the start date for his claim. There is no fact-finding record of how the original claim date (or which original claim date is correct) was determined based upon how the severance pay was calculated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.3-4 provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage.
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

871 IAC 24.9(1)b provides: Determination of benefit rights.

24.9(1) Monetary determinations.

b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

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).

Claimant's reliance on his volunteerism for the State of Iowa as a reason to excuse his delay in appealing the monetary record is immaterial. Since claimant did not file his appeal of the monetary record within the ten day period, plus the additional two day period since the deadline fell on a Saturday, the administrative law judge does not have jurisdiction to determine the request to add a dependent to the claim.

The issue of the backdating is remanded for investigation and determination since there is not a fact-finding decision on the matter and no recorded basis for the calculation of severance pay and the bearing of that on the effective date of the claim.

DECISION:

The December 14, 2007, reference 01, representative's decision is affirmed. The appeal of the November 14, 2007 monetary record was not timely and the report setting the number of dependents as three remains in full force and effect.

REMAND: The issue regarding the correct original claim date based upon the deduction of severance pay after the separation delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination pursuant to Iowa Code § 96.5(5) and 871 IAC 24.2(1)a & h.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs