

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MOHAMED A ABDALLA**  
Claimant

**APPEAL NO. 06A-UI-10251-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACTION WAREHOUSE CO LTD**  
Employer

**OC: 01-01-06 R: 02**  
**Claimant: Appellant (4R)**

Iowa Code section 96.6-2 – Timeliness of Appeal  
871 IAC 24.2(1)a & h(1) & (2) – Backdating

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 16, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 5, 2006. The claimant did participate through the interpretation of Magdy Salama and was represented by John Hemminger, Attorney at Law. The employer did not participate. Prior to the hearing Kent Denning had provided his phone number where he could be reached for the hearing, but when he was called by the administrative law judge to participate in the hearing his voice mail answered. The administrative law judge left Mr. Denning a message to call in to participate in the hearing, but he did not call in before the hearing was concluded and the record was closed.

**ISSUE:**

Did the claimant file a timely appeal?

The issue is whether claimant can backdate the claim prior to January 1, 2006.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on March 16, 2006. The claimant did receive the decision. The claimant had a friend help him review the decision and he decided that he did not want to appeal the decision. Nowhere in the decision that was sent to the claimant was the claimant given a date by which his appeal must be filed. On October 23, 2006 the claimant went to his local workforce office to reopen his claim for benefits due to an employment separation that is not the subject of this case. The agency interpreted his appeal as an appeal of the March 16, 2006 fact-finding decision. The claimant was never told that he had a date certain by which his appeal must be filed. Normally the fact-finding decisions contain clear instructions about when an appeal must be filed in order to be considered timely. For some unknown reason, the fact-finding decision of March 13 did not contain the deadline warning. The claimant filed a claim for benefits with an effective date of January 1, 2006.

## REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 fact-finding decision that was sent to the claimant on March 16, 2006 did not contain a date by which the appeal was due to the appeals bureau. The claimant did not receive a deadline by which his appeal was due. Without a deadline the claimant was reasonable in assuming that he could change his mind and appeal the fact-finding decision at a later date. Without out notice of a date the claimant had no way of knowing that if he did not file his appeal by a date certain his rights could be affected. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant's request to backdate the claim is denied.

871 IAC 24.2(1)h(1), (2) and (3) provide:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual reports in person at a workforce development center and registers for work in accordance with paragraph "a" of this rule.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

Backdated prior to the week in which the individual reported if the individual presents to the department sufficient grounds to justify or excuse the delay;

There is scheduled filing in the following week because of a mass layoff;

The failure of the department to recognize the expiration of the claimant's previous benefit year;

The individual is given incorrect advice by a workforce development employee;

The claimant filed an interstate claim against another state which has been determined as ineligible;

Failure on the part of the employer to comply with the provisions of the law or of these rules;

Coercion or intimidation exercised by the employer to prevent the prompt filing of such claim;

Failure of the department to discharge its responsibilities promptly in connection with such claim, the department shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of potential rights to benefits, provided, that no such claim may be filed after the 13 weeks subsequent to the end of the benefit year during which the week of unemployment occurred. In the event continuous jurisdiction is exercised under the provisions of the law, the department may, in its discretion, extend the period during which claims, with respect to week of unemployment affected by such redetermination, may be filed.

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating shall not be allowed at the change of the calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

The claimant did not file his claim for benefits during the first week of his unemployment or during December 2005 when he was laid off. He had the opportunity to seek help from his local workforce office when he was first laid off to inquire about his benefits. His delay in filing was not due to any misconduct or misrepresentation on the part of any agency employee. His failure

to file because he did not know he could is not considered a good cause reason for having failed to file a claim during the first week of unemployment. Backdating is denied.

**DECISION:**

The March 16, 2006, reference 01 decision is affirmed. The claimant's appeal is considered timely. The claimant's request to backdate the claim is denied.

**REMAND:**

The claimant's claim is remanded to the claims section so that his claim for benefits maybe unlocked and benefits released to him as of October 1, 2006, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs