

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA MANNETTER
Claimant

APPEAL 21A-UI-24197-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/26/21
Claimant: Appellant (1)**

Iowa Code § 96.4(4) – Eligibility in a Second Benefit Year
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Christina Mannerter (claimant) appealed a representative's October 13, 2021, decision (reference 02) that concluded she had not been paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year and was, therefore, not eligible to receive unemployment insurance benefits as of September 26, 2021. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on December 28, 2021. The claimant participated personally. Exhibits D-1 and D-2 were received into the record.

ISSUES:

Whether the claimant's appeal is timely? Whether there are reasonable grounds to consider the claimant's appeal otherwise timely?

Whether the claimant has made at least eight times her weekly benefit amount during or in the subsequent benefit year?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant filed for unemployment insurance benefits with an effective date of September 27, 2020. Her weekly benefit amount during her 2020, claim year was \$276.00. After her 2020, benefit year ended, she filed a second year of benefits effective September 26, 2021. She has not earned any insured wages during or after her previous claim year.

A disqualification decision was mailed to the claimant's address of record on October 13, 2021. (Exhibit D-1) The claimant did not receive this decision until October 22, 2021. The decision stated it became final unless an appeal was postmarked or received by the Appeals Bureau by October 23, 2021, unless that date fell on a Saturday, Sunday or holiday, in which case it would

be due the following working day. October 23, 2021 fell on a Saturday and the next working day was October 25, 2021. The decision listed the means to appeal on the back. The claimant filed her appeal on October 29, 2021, through the Iowa Workforce Development's online appeal portal. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is not timely.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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, subsections 10 and 11, 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 issued, 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. 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. Board 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. 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. Albeit the decision was delayed, but the claimant had all the requisite information she needed to file the appeal by October 25, 2021. The administrative law judge recognizes that the claimant ideally would want to speak with her attorney prior to appealing. This is a separate question then whether she had a reasonable opportunity to file an appeal which only regards notice of disqualification and basic information filing the appeal. Both of these criteria were met when she received the decision on October 22, 2021.

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 appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Assuming arguendo the claimant's appeal is otherwise timely, she is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.4(4)a-b-c provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

b. For an individual who does not have sufficient wages in the base period, as defined in section 96.1A, to otherwise qualify for benefits pursuant to this subsection, the individual's base period shall be the last four completed calendar quarters immediately preceding the first day of the individual's benefit year if such period qualifies the individual for benefits under this subsection.

(1) Wages that fall within the alternative base period established under this paragraph "b" are not available for qualifying benefits in any subsequent benefit year.

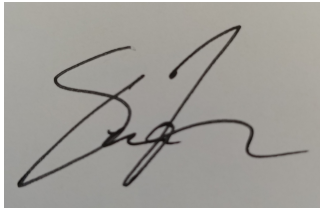
(2) Employers shall be charged in the manner provided in this chapter for benefits paid based upon quarters used in the alternative base period.

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

In order to be eligible to receive unemployment insurance benefits in a second benefit year, the claimant must show that she has been paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year. The claimant's weekly benefit amount in 2020 was \$276.00. Eight times \$276.00 is \$2208.00. The claimant has not earned insured wages since filing for unemployment due to her separation from Waverly Health Center. Therefore, the claimant has not requalified for benefits since the separation and since the prior claim year separation decision. Benefits are denied.

DECISION:

The unemployment insurance decision dated October 13, 2021, decision (reference 02), is affirmed. The claimant's appeal is not timely. Assuming arguendo it is otherwise timely, the claimant is not eligible to receive unemployment insurance benefits because she has not been paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year unemployment insurance benefits.



Sean M. Nelson
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January 24, 2022
Decision Dated and Mailed

smn/kmj