

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROY D BIONDI
Claimant

APPEAL 21A-UI-24716-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 11/29/20
Claimant: Appellant (1)

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 November 3, 2021, claimant, Roy D. Biondi, filed an appeal from the January 29, 2021, (reference 01) unemployment insurance decision that denied benefits because of a lack of at least eight times the prior claim year's weekly benefit amount in insured wages during or after the prior claim year. After due notice was issued, a hearing was held on January 5, 2022, and was held together with appeal 21A-UI-24717-AR-T and 21A-UI-24719-AR-T. Claimant participated personally. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?

Did the claimant earn insured wages of at least eight times the prior claim year's weekly benefit amount during or after the previous benefit year to become eligible for a second benefit year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's weekly benefit amount ("WBA") in the prior claim year effective December 1, 2019, is \$591.00. They wish to claim benefits during a second claim year effective November 29, 2020.

The claimant did not earn at least eight times the prior claim year's WBA in insured wages during or subsequent to the prior claim year beginning December 1, 2019. Claimant testified that they have not worked for any employer since separating from employer Lee Enterprises prior to opening the claim in December 2019. The administrative record reflects that no insured quarterly wages were reported to IWD by any business entity since claimant opened the claim for benefits.

A disqualification decision was mailed to claimant's last known address of record on January 29, 2021. He did receive the decision. In response to the decision, claimant called Iowa Workforce Development (IWD) to inquire about his benefits. Because he continued to receive benefits, he did not appeal the decision. The first sentence of the decision states, "If this decision denies

benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay.” He appealed two overpayment decisions he received later, and the appeal was docketed for this decision, as well, since it was the underlying decision.

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: “[u]nless 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(1) provides:

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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

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.

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).

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

However, even if the evidence indicated that the appeal was timely filed, the administrative law judge concludes that claimant is not eligible to receive benefits during the subsequent benefit year.

Effective July 2, 2017, Iowa Code section 96.4(4)a and c provides:

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

4. 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.

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.

Claimant did not demonstrate an ongoing connection to the labor market by earning at least eight times the prior claim year's WBA in insured wages during or subsequent to the claim year beginning December 1, 2019. Therefore, claimant is not eligible to receive benefits during the current claim year beginning November 29, 2020.

DECISION:

The January 29, 2021, (reference 01), unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect. Alternatively, claimant has not demonstrated that he is eligible to receive benefits during the current claim year, beginning November 29, 2020. If claimant does earn eight times the prior claim year's weekly benefit amount in insured wages, they may present evidence of that to IWD to determine eligibility.



Alexis D. Rowe
Administrative Law Judge

January 28th, 2022
Decision Dated and Mailed

ar/rs