

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEL E HARMSSEN
Claimant

APPEAL NO. 11A-UI-01267-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/19/10
Claimant: Appellant (1)**

871 IAC 24.2(1)(h) – Backdate a Claim
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 14, 2011 determination (reference 01) that denied his request to backdate his claim prior to December 19, 2010. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge must deny the claimant request to backdate his claim because he did not file a timely appeal.

ISSUES:

Did the claimant file timely appeal or establish a legal excuse for filing a late appeal?

Should the claimant's request to backdate his claim be granted or denied?

FINDINGS OF FACT:

The claimant's last day of work was December 3, 2010. The claimant did not intend to file a claim this week because of vacation pay or wages he would receive. The claimant understood it was not a problem to backdate his claim. The claimant did not want to file a claim online because he did not know how hard or easy it would be. The claimant did not have child care arrangements until the week of December 20. On December 21 the claimant went to his local Workforce office and established his claim for benefits. He requested that it be backdated to December 13, 2010. The claimant did not have his banking information with him when he was at his local Workforce office. A representative's told him could add that information online when he got home. Later on December 21, the claimant went online and submitted his banking information from his home computer.

On January 14, 2011 a representative's determination was mailed to the claimant. The determination denied his request to backdate his claim. The determination also informed the claimant that an appeal had to be filed or postmarked on or before January 24, 2010.

The claimant went out of town January 19 and returned on January 23. He picked up his mail on January 24. In this mail was the representative's January 14 determination. The claimant

read the determination on January 24 and noticed it was the last day to file an appeal. The claimant initially decided he would not pursue his backdating request because of the deadline date to appeal.

When the claimant went to his local Workforce office on February 2 for another matter, a representative suggested he appeal because he did not have anything to lose. The claimant filed his appeal on February 2, 2011.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the January 24 deadline for appealing expired.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The claimant initially decided he would not appeal the January 14 determination because he received it on the last day to appeal. The claimant's change of heart nine days later does not establish a legal excuse for filing a late appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal. This means the January 14, 2011, cannot be changed.

DECISION:

The representative's January 14, 2011, 2000 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction to address the merits of his appeal. This means the claimant's request to backdate his claim to December 13, 2010, is still denied.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw