

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTOPHER H KREMIN**  
Claimant

**APPEAL NO. 07A-UI-11150-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 10-28-07 R: 03  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 19, 2007, reference 03, decision that denied his request to backdate his claim for unemployment insurance benefits prior to October 28, 2007. After due notice was issued, a hearing was scheduled to be held on December 18, 2007. The appellant did not respond to the hearing notice instructions and did not call in to participate in the hearing. The claimant called after the hearing record had been closed and indicated that he had not received the hearing notice. He had received a notification with exhibits and thought that the administrative law judge would call him because he did not have the instructions from the hearing notice. Because the claimant did not receive the hearing notice, he had no way of following the instructions on the notice. Since the claimant was the only party scheduled to participate in the hearing, the administrative law judge asked the claimant if he would be willing to waive receipt of the hearing notice and have the hearing on December 18, 2007. The claimant did waive receipt of the hearing notice and the hearing was held on December 18, 2007. The claimant did participate. Department's Exhibit D-1 was received.

**ISSUE:**

Did the claimant file a timely appeal?

Should the claimant be allowed to backdate his claim for unemployment insurance benefits prior to October 28, 2007?

**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 last known address of record on November 19, 2007. The claimant did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 29, 2007. The appeal was not filed until December 4, 2007, which is after the date noticed on the disqualification decision.

The claimant received the decision shortly after it was mailed but delayed in opening the decision until November 28, 2007. The claimant delayed in opening his mail because he was busy taking care of other business. The claimant called his local workforce office on November 28 to ask a representative some questions but did not hear back from a representative that day, so he delayed filing his appeal until mailing it on November 30. The postmark on the envelope indicates his appeal was mailed on December 4.

The claimant was separated from his employment on September 15, 2007 but delayed in filing a claim for unemployment insurance benefits until October 28 because he thought it would hurt his chances of rehire with the company if he filed for unemployment insurance benefits. The claimant filed a claim for benefits with an effective date of October 28, 2007.

No person from Iowa Workforce Development instructed or encouraged the claimant not to file his claim for unemployment insurance benefits. The claimant did not call to ask questions about filing his claim or the impact of filing a claim until after he filed his claim online on October 28, 2007.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be determined is whether the claimant filed a timely appeal?

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

Iowa Code § 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 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). 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 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.

The claimant delayed in filing his appeal because he did not open his mail in a timely fashion. The claimant received the representative's decision prior to November 28, 2007 but did not open it until that day. He delayed in filing the appeal because he wanted to question an Iowa Workforce Development employee whom he called and left a message for on November 28. The Iowa Workforce Development employee did not return the claimant's phone call on November 28. While the administrative law judge finds the claimant's delay in opening his mail the primary cause of his late appeal, had the agency employee returned the claimant's call on November 28, the claimant's appeal could have been timely. Thus, under these circumstances, the administrative law judge finds the claimant's appeal to be 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 waited to file his claim for benefits because he did not want to seek unemployment insurance benefits and because he thought it would hurt his chances for rehire with the employer. No one from Iowa Workforce Development told him or encouraged him not to file his appeal. The claimant did not contact anyone at Iowa Workforce Development to ask questions until after he filed his claim for benefits on October 28, 2007. The claimant's reason for delay in filing his claim for benefits 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 November 19, 2007, reference 03, decision is affirmed. The claimant's request to backdate the claim is denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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