

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TITUS K CONNALLY
Claimant

APPEAL NO: 18A-UI-06782-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/24/17
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.2(1)g – Retroactive Benefits
Iowa Code § 96.6(1) – Filing Claims

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 18, 2018, (reference 02) unemployment insurance decision that denied retroactive benefits. The claimant was properly notified about the hearing. After due notice was issued, a hearing was scheduled and held by telephone conference call on July 11, 2018. The hearing was held jointly with Appeals 18A-UI-06781-JCT and 18A-UI-06783-JCT. The claimant participated personally. Department Exhibits 1-5 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Should the claimant's request for retroactive benefits for the one-week period ending December 30, 2017 be granted?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed an original claim effective December 24, 2017. When the claim was filed, the claimant was given the option of reading the Unemployment Insurance Handbook online or a hardcopy, and the claimant agreed that he would read and understand the handbook. The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions can lead to a denial of benefits. The handbook also informs claimants that they should call IWD customer service for help if they don't understand the information in the handbook. He did read some of the online version of the Unemployment Insurance Benefits Handbook as instructed when he established the unemployment insurance claim.

The *Unemployment Insurance Benefits Handbook* provides:

Claim Effective Date

The effective date of all UI claims, regardless of filing method, will be the Sunday of the week in which the application was filed. The effective date of a claim will not be changed for applications that were not filed in a timely manner.

and

Reactivating a Claim

An individual can start and stop claiming weekly benefits as many times as necessary during the benefit year. This is called a break in reporting status. Any break in reporting requires the individual to file another initial claim application during the week they want to start collecting benefits again. Any employment during the break must be reported. If any weekly claim filing is missed during the claim year, an individual must file an initial claim application to reactivate their claim. This would apply even if 1 week is not filed timely.

The *Unemployment Insurance Benefits Handbook* provides:

Filing Weekly Claims

How to File

After you file your initial claim, file weekly claims online at www.iowaworkforcedevelopment.gov for every week you are unemployed or your hours are reduced. You must file a weekly claim for any week that you want payment even if your eligibility is being decided or you have an appeal pending. Payment will not be made for any weeks that are not timely filed. If a weekly claim filing is missed for one or more weeks, a new initial claim application must be filed. It is your responsibility to check the status of your claim during the week to ensure the prior week has been recorded.

To request UI benefit payments during weeks of unemployment, individuals must certify they:

- Are currently unemployed or working reduced hours
- Are able to work and available for work
- Have not refused any job offers or referrals to a job
- Are actively looking for work (unless waived)
- Are reporting any pay or pension payment

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Start of UI claim week one						Last day of week one (no filing)
First day to file week one	File for week one	File for week one	File for week one	File for week one	Last day to file for week one	Last day of week two (no filing)
First day to file week two	File for week two	File for week two	File for week two	File for week two	Last day to file for week two	Last day of week three (no filing)
First day to file week three	File for week three	File for week three	File for week three	File for week three	Last day to file for week three	Last day of week four (no filing)

When to File

The current week is the week that just ended on Saturday. Weekly claims must be filed 8 am Sunday through 5:30 pm Friday for the prior week only. This means individuals have six days to file the previous week's claim. See the chart above for the days available to file. Weekly claims can be filed online using a mobile device or computer at <https://uiclaims.iwd.iowa.gov/weeklyclaims/>.

Delay in filing your weekly claim could result in denial of benefits.

IMPORTANT: You will receive confirmation that the claim has been processed successfully. If you don't receive confirmation, the process must be repeated until the claim has been successfully submitted.

The claimant thought he properly filed his weekly continued claim for benefits on December 31, 2017 for the week ending December 30, 2017, but did not receive a confirmation screen or anticipated payment of benefits. He followed up with Iowa Workforce Development in June 2018, when he was temporarily laid off again.

The claimant earned no wages for the week ending December 30, 2017. The claimant reported \$267.00 in holiday pay for the week ending December 30, 2017 (Department Exhibit D-5). He was able and available for work.

An initial unemployment insurance decision (reference 02) resulting in denial of retroactive benefits was mailed to the claimant's last known address of record on June 8, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 18, 2018 (Department Exhibit D-2). The claimant received the initial decision within the appeal period. On the same day, he received the reference 01 decision denying backdating. A couple of days later, he received a third decision (reference 03) stating his request to backdate his claim prior June 3, 2018 was denied (Department Exhibit D-3). The claimant became confused by the three decisions and thought it meant the newest decision (which was identical to the reference 01 decision) would supersede the prior decisions. Accordingly, he understood the final day to appeal as June 21, 2018 and filed his appeal on June 21, 2018 (Department Exhibit D-4).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is 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 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, 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 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).

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. 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). 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did not have a reasonable opportunity to file a timely appeal. In this case, the claimant received the reference 02 decision (at issue here) plus he also received two identical decisions (reference 01 and 03) over a three day period, which listed different final days to appeal the decision. The administrative law judge is persuaded the claimant's confusion, given the chronology of decisions, was reasonable under the circumstances. The administrative law judge concludes the claimant has established a good cause reason for his delayed appeal. The claimant's appeal would be considered timely based upon the reference 03 decision appeal deadline. According, the administrative law judge concludes the claimant's appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant's request for retroactive benefits must be denied.

Iowa Code § 96.6(1) provides:

Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Iowa Admin. Code r. 871-24.2(1)g provides:

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

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:

g. No benefit payment shall be allowed until the individual claiming benefits has completed a continued claim online or as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and not later than close of business on the Friday following the weekly reporting period.

(2) An individual claiming benefits using the weekly continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The individual shall set forth the following:

1. That the individual continues the claim for benefits;
2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, was able to work and available for work;
3. That the individual indicates the number of employers contacted for work, the contact information for each employer contacted, and the result of the contact;
4. That the individual knows the law provides penalties for false statements in connection with the claim;
5. That the individual has reported any job offer received during the period covered by the claim;
6. That the individual understands the individual's responsibility to review the individual's claim records to ensure there is no delay in filing the individual's weekly claim to remain in continuous reporting status. Failure to file claims each week will require a claimant to submit a claim application to reactivate the claim;
7. Other information required by the department.

For each week the claimant remains fully or partially unemployed, they must file a weekly continued claim to show they are available for work, report any wages, and otherwise establish eligibility for that past week of benefit payment. This process in filing a weekly continued claim must be done sometime between Sunday and Friday of the following week. If a claimant does not file a weekly continued claim for one week for any reason and becomes unemployed again, the process must start over by reactivating the initial claim no later than Friday at 4:30 p.m. It is the individual's responsibility to ensure there is no delay in filing the weekly claim to remain in continuous reporting status.

The administrative law judge is sympathetic to the claimant, but based on the evidence presented, the administrative law judge concludes the claimant failed to properly file a weekly continued claim for the period of December 24, 2017 through December 30, 2017. As such, retroactive benefits are denied.

DECISION:

The June 8, 2018 (reference 02) unemployment insurance decision is affirmed. The appeal was timely. The claimant's request for retroactive benefits is denied.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs