

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HUI LIU
Claimant

APPEAL 20A-UI-09715-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/07/20
Claimant: Appellant (1)

Iowa Code § 96.3(4) – Determination of Benefits
Iowa Code § 96.4(4) – Monetary Eligibility
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Hui Liu, filed an appeal from the June 9, 2020 monetary determination that found he had sufficient earnings to receive regular Unemployment Insurance (UI) Benefits and established a weekly benefit amount of \$293.00 per week.

After proper notice, a telephone hearing was conducted on September 29, 2020. The claimant participated personally and through a Mandarin Chinese interpreter from CTS Language Link. The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted. 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.

NOTE TO CLAIMANT: To change the date your claim starts, (as referenced in the appeal letter) you must contact IWD Customer Service at 866-239-0843 and make a request to backdate the claim.

ISSUES:

Is the appeal timely?
Is the monetary record dated June 9, 2020, correct?
Is the claimant monetarily eligible for benefits effective June 7, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established the claim for unemployment insurance benefits with an effective date of June 7, 2020.

To determine whether a claimant is monetarily eligible for unemployment insurance benefits, wages earned during the based period are reviewed. The base period for the claim year covers

the first, second, third and fourth quarters of 2019. The wages listed in the monetary record for those quarters are correct.

A monetary record was mailed to the claimant on June 9, 2020. The claimant received the document on June 13, 2020. He used a translator device to translate, as he does not read English. On the monetary record's back side of the page, was a warning that any appeal must be filed within 10 days and provided instructions. He did not understand that an appeal must be filed and received within 10 days. June 19th was the 10th day to appeal.

Claimant hired an accountant to file an appeal on his behalf. Because claimant's accountant was busy, the appeal was not filed until August 14, 2020 (Department Exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the claimant's appeal can be accepted as timely filed.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 claimant does not read English and took proactive steps to try and translate the monetary record with a translator device. He did not understand the sensitivity of the due date and made a good faith effort to properly file an appeal, even though it was not received within the prescribed appeal period. Based on the evidence presented, the administrative law judge concludes the claimant's appeal should be timely accepted.

For the reasons that follow, the administrative law judge concludes the monetary record is correct at this time.

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.

Iowa Admin. Code r. 871-24.1(11) provides:

Base period. The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers'

compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

- a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or
- b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

At this time, because the claimant is monetarily eligible for benefits based upon his regular base period wage history. The monetary record is correct. The claimant is eligible for \$293.00 each week.

DECISION:

The monetary record dated June 9, 2020, is correct. The appeal is timely. The claimant is monetarily eligible for benefits.



Jennifer L. Beckman
Administrative Law Judge
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September 30, 2020
Decision Dated and Mailed

jlb/scn