

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J HENRY**  
Claimant

**APPEAL NO: 14A-UI-05479-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/05/14**

**Claimant: Appellant (2)**

871 IAC 24.2(1)a & h(1) & (2) – Backdating  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Michael J. Henry (claimant) appealed a representative's April 24, 2014 (reference 01) decision that denied the claimant's request to backdate his additional claim prior to April 20, 2014. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on June 18, 2014, scheduled for hearing at 8:30 a.m. The claimant failed to respond to the hearing notice and register a telephone number in the Appeals Section's conference call system at which he could be reached for the hearing and did not participate in the hearing. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely?

Should the claimant's request to back date his additional claim be granted?

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last-known address of record on April 24, 2014. The claimant did not receive the decision because on April 26 he went to Texas for some work. He learned of the decision when he returned to Iowa on May 27, 2014. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 4, 2014. The appeal was not filed until it was hand-delivered to an Agency office on May 28, 2014, the day after he learned it had been issued.

The claimant established an unemployment insurance benefit year effective January 5, 2014. He made weekly continued claims through the week ending March 8, 2014. He started some other work and ceased making weekly continued claims, but then had a separation from employment through a layoff from the new employment effective on or about April 13, 2014.

On April 20 he attempted to make a claim for the week ending April 19, but received a message that he needed to take action to reactivate his claim by making an additional claim, which he did on April 21, effective April 13, 2014. He seeks to backdate his additional claim to April 13, 2014.

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

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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 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 not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

Agency rule 871 IAC 24.2(1)h provides that claims for unemployment insurance benefits are ordinarily effective on the Sunday of the calendar week in which the individual files the initial claim. For good cause, a claim may be backdated. The administrative law judge finds good cause in that the claimant made a good faith attempt to make an additional claim for April 13 on April 20. The claim should be backdated to April 13.

**DECISION:**

The appeal in this case is treated as timely. The representative's April 24, 2014 (reference 01) decision is reversed. The claimant's request to backdate his additional claim to April 13, 2014 is allowed.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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