

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**PHILIP J ABSHIER  
APT #2  
813 WESTWINDS DR  
IOWA CITY IA 52246**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Appeal Number: 05A-UI-06015-DT  
OC: 08/01/04 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Philip J. Abshier (claimant) appealed a representative's May 23, 2005 decision (reference 02) that denied the claimant's request to backdate the claim to March 20, 2005. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on June 27, 2005. The claimant participated in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last known address of record on May 23, 2005. The claimant received the decision after May 30, 2005, but was uncertain as to whether it was before or after June 1, 2005. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 2, 2005. The appeal was not filed until it was hand delivered to the local Agency office on June 6, 2005, which is after the date noticed on the disqualification decision.

The claimant had a separation from employment from Access Direct Telemarketing, Inc. (employer) effective July 28, 2004. He established a claim for unemployment insurance benefits effective August 1, 2004. A representative's decision was issued on September 3, 2004 (reference 01) that concluded the claimant eligible for unemployment insurance benefits. The employer appealed, and an appeal hearing was held resulting in an administrative law judge's decision being entered October 8, 2004 under 04A-UI-09781-MT, reversing the representative's decision, disqualifying him from unemployment insurance benefits until requalification, and holding him overpaid. The second to last sentence in the decision, under the heading "DECISION," states: "Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible." The claimant did not appeal that decision and it has become final.

The employer rehired the claimant on or about January 24, 2005, and he was again separated from employment with the employer on or about March 18, 2005. He did not reopen his claim by filing an additional claim until the week beginning May 15, 2005. The delay in filing the claim was due to the claimant not understanding that he did not have to wait for the expiration of his claim year to file an additional claim, but only needed to wait until he had earned ten times his weekly benefit amount. He did not speak to any other Agency representative in reaching his conclusion that he could not reopen his claim until July 31, 2005, but only relied on the fact that he had not been given specific instructions after he became disqualified as a result of the October 8, 2004 administrative law judge's decision as to how he could reopen his claim after requalification.

On or about May 15, 2005, he encountered a former coworker who informed him he could reopen his claim; he then contacted a local Agency representative, who explained the requalification and reopening process in more detail, and assisted him in reopening his claim.

On May 23, 2005, an Agency representative issued a separate decision (reference 03) that concluded that the claimant had requalified by earning ten times his weekly benefit amount after the July 28, 2004 separation from employment with the employer. On June 14, 2005, another representative's decision (reference 04) was issued concluding that the March 18, 2005 separation from the employer was disqualifying; the claimant has appealed that decision, and as of the date of the hearing in this matter, an appeal hearing was pending on the March 18, 2005 separation under 05A-UI-06564-CT.

#### REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision.

Iowa Code section 96.6-2 provides in pertinent part:

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.

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 claimant did not provide clear testimony on this point; had the claimant received the representative's decision on or before June 1, 2005, the administrative law judge would conclude that the claimant had sufficient time to perfect an appeal at least by mailing an appeal by June 2, 2005; if the claimant did not receive the decision until on or after June 2, 2005, the administrative law judge would find that he not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes to give the claimant the benefit of the doubt and conclude that he did not receive the decision until on or after June 2, 2005, and therefore 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 section 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979), and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The substantive issue in this case is whether the claimant's claim should be backdated to March 20, 2005.

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 reason the claimant failed to file an earlier unemployment insurance claim was because he believed he could not reopen his claim until after his current claim year expired, due to the prior disqualification. A misunderstanding of the legal consequences of a disqualification is not considered a good cause reason for having failed to file a claim after a new separation from employment. The claimant has not shown he received incorrect advice by an agency employee, that the failure to file an earlier claim was due to the employer's failure to comply with the law, or the employer prevented the claimant from promptly filing a claim. The administrative law judge's decision which disqualified the claimant correctly and clearly indicated that he was only disqualified until he had "worked in and been paid wages for insured work equal to ten times [his] weekly benefit amount." There was no inference or suggestion in the decision that the claimant would have to wait a longer period of time even if he had requalified. If he had a question as to what he needed to do in order to renew his eligibility after requalification, he could have contacted the Agency for further instruction; there is no evidence that he did so prior to the week of May 15, 2005 and was given incorrect information. The claimant has failed to establish sufficient grounds to justify or excuse the delay in filing his additional claim. Backdating is denied.

**DECISION:**

The representative's May 23, 2005 decision (reference 02) is affirmed. The appeal in this case is treated as timely. The claimant's request to backdate his claim is denied.

ld/pjs