

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HAUNS A NELSEN
Claimant

APPEAL 17A-UI-01167-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/01/17
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.6(1) – Filing Claims
Iowa Admin. Code r. 871-24.2(1)a & h(1) & (2) – Backdating

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 11, 2017, (reference 01) unemployment insurance decision that denied his request to backdate his claim. A first hearing was scheduled on February 22, 2017. The claimant participated personally. The hearing was continued when the claimant acknowledged needing assistance with reading documents, so he could fully participate. A second hearing was scheduled for March 2, 2017. The claimant had notified the Appeals Bureau of his need for a postponement but was unable to fax in a request. The hearing was postponed a second time when the claimant revealed he was at his grandmother's funeral, at the time of the hearing. A third and final hearing was scheduled and conducted by telephone on March 10, 2017. The claimant participated personally. Mitzi Tann, Human Resources Director with employer, Bertch Cabinets, testified as a witness for the claimant.

Department Exhibit D-1 was 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 claim be backdated prior to January 1, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An initial decision denying the claimant's request to backdate his claim was mailed to his last-known address of record on January 11, 2017. He received the decision within the appeal period and opened the letter on January 20, 2017. The claimant credibly testified that he had a reading disability and required assistance in comprehending the document. He asked his mother for assistance who read and explained it to him.

The claimant was aware of the January 21, 2017 warning that stated an appeal must be postmarked or received by the Appeals Bureau by that date. January 21, 2017 was a Saturday and so on January 23, 2017, the next business day, the claimant went to the Waterloo IWD office to help him complete his appeal. The Waterloo office advised the claimant it was not authorized to explain the document to him or assist with his appeal letter. He was advised to go

back to his mother or family for help in filing the appeal. The claimant asserted he tried to explain to the IWD office his challenges with literacy and needing assistance. The claimant then sought assistance from his mother in filing the appeal, but it was not filed until January 31, 2017, (Department Exhibit D-1) after the period to appeal.

The claimant filed a claim for benefits with an effective date of January 1, 2017, in response to a temporary layoff from Bertch Cabinets, which occurred from December 25 through December 31, 2016. The claimant had worked his scheduled shift for the week ending December 24, 2016, and resumed work January 1 through 7, 2017, before a second temporary layoff of January 8 through 14, 2017. The claimant attempted to file his claim online on December 30, 2016, after previously having assistance from the employer in filing of claims. The claimant was aware his claim did not go through as he experienced technical difficulties completing it. He went to the Waterloo IWD office the next week for assistance and was told his benefit year had ended and he had to establish a new claim. The claimant was unaware that his benefit year had lapsed. The claimant seeks to backdate his claim to December 25, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant filed a timely appeal.

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. Bd. 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 unemployment insurance 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 attempted to visit his local IWD office in Waterloo on January 23, 2017. Because the tenth day to appeal was on a Saturday, the claimant had until January 23, 2017 to file his appeal, after the initial decision was mailed on January 11, 2017. The claimant was refused assistance by the Waterloo IWD office and told he needed to return to his mother or family for help in explaining and preparing the appeal. The claimant made a good faith effort to file a timely appeal within the appeal period on January 23, 2017, but was delayed due to his local office failure to discharge its duties, as the local office had the authority to explain the initial decision and guide him in filing his appeal. Under these circumstances, the claimant's appeal shall be deemed timely.

The administrative law judge further concludes the claimant's request to backdate the claim is granted.

The unemployment insurance rules state when claim are made effective in 871 IAC 24.2(1)h(1) and (2). In this case, the claimant attempted to file his weekly claim on December 30, 2016, during the week he was unemployed, but was locked out of the online claim system, because he was unaware his prior claim year had expired and that he needed to establish a new claim under a second benefit year. After being locked out, the claimant visited the local IWD the following week to resolve the matter. The administrative law judge is persuaded the claimant has established a good cause reason for having failed to file a claim during the first week of unemployment. Backdating is allowed.

DECISION:

The January 11, 2017, (reference 01) unemployment insurance decision is reversed. The claimant filed a timely appeal. The claimant's request to backdate the claim to December 25, 2016, is granted, as are the retroactive benefits for the same time period. The claimant should report gross wages earned, if any, for that week.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs