

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ENRIQUE A OLGUIN
Claimant

APPEAL 19A-UI-03614-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 01/20/19
Claimant: Appellant (1)**

Iowa Admin. Code r. 871-24.9(1)(b) – Timeliness of Appeal
Iowa Code § 96.3(4) – Determination of Benefits

STATEMENT OF THE CASE:

On May 1, 2019, the claimant filed an appeal from the March 14, 2019, monetary record. After due notice was issued, a telephone conference hearing was scheduled to be held on May 21, 2019. Claimant participated. Official notice was taken of the administrative record.

ISSUES:

Did the claimant timely appeal the monetary determination?
Is the claimant's monetary determination correct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A monetary record was initially mailed to claimant's last known address on January 23, 2019. That record listed two employers within claimant's base period, Olson Partners LLC (account number 571457) and Parking Lot Specialties (account number 338831). The record showed \$1,514.43 in wages from Olson Partners for the fourth quarter of 2017. Claimant never worked for or earned wages from Olson Partners. This information came to the attention of Iowa Workforce Development (IWD), who investigated and found that Olson Partners had entered an incorrect social security number for one of its employees. That social security number matched the claimant's which is why the wages were incorrectly attributed to him. Claimant did not notice the wages from Olson Partners when he received in monetary determination in January 2019.

Once the reporting error came to the attention of IWD, claimant's monetary record was adjusted to reflect the correct wages. Once the wages from Olson Partners were removed, claimant's weekly benefit amount went from \$439.00 to \$375.00. A corrected monetary record was mailed to the claimant's last known address of record on March 14, 2019. Claimant testified he never received the March 14, 2019 determination because his mailbox was damaged in late-January 2019 and he only recently began receiving mail again. Claimant was not picking up his mail from the post office during this time. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau within ten days of the mailing date marked on the form. The appeal was not filed until May 1, 2019, which is after the date noticed on the unemployment insurance decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is untimely. Even if the appeal were timely, the March 14, 2019 monetary determination is correct.

Iowa Admin. Code r. 871-24.9(1)(b) provides:

- b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

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 have a reasonable opportunity to file a timely appeal. The appeal was mailed to claimant on March 14, 2019. Claimant knew he was not receiving mail at his damaged mailbox, but failed to regularly retrieve his mail from the post office or make any attempt to repair the broken mailbox. The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Admin. Code r. 871-24.9(1)(b), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

Even if the appeal were timely, it appears the March 14, 2019 monetary record is correct.

Iowa Code section 96.3(4) provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine

annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage.
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "a", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

The initial monetary record mailed to claimant in January 2019 showed wages for two employers. Claimant agreed he did not work for one of those employers, Olson Partners LLC. The monetary record mailed on March 14, 2019 only shows wages from Parking Lot Specialties, whom claimant agrees was his only employer. The March 14, 2019 monetary record is correct.

DECISION:

The March 14, 2019, monetary determination is affirmed as the appeal is not timely. Even if the appeal were timely, the monetary determination dated March 14, 2019 is correct.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs