

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BARBARA O GIBERSON
Claimant

APPEAL 17A-UI-08169-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/09/17
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
871 IAC 24.2(1)a & h(1) & (2) – Backdating

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 14, 2017, (reference 01) decision that denied her request to backdate the claim for benefits prior to July 9, 2017. After due notice was issued, a hearing was held by telephone conference call on August 29, 2017. Claimant participated along with her witness Kathy Baker, Human Resources Administrator. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Did the claimant file a timely appeal?

May the claim be backdated prior to July 9, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits with an effective date of July 9, 2017 and desires to backdate the claim date to July 2, 2017. The claimant was laid off from Dexter Laundry, Inc. for the week ending July 8, 2017. She was paid \$116.00 in holiday pay for the July 4th Holiday.

Since the employer knew they were going to have a company wide shut down starting on July 3 and that the agency no longer allowed employers to file claims for immediate release for their employees, they arranged for an IWD employee to come to the plant to explain to their employees how to file for unemployment benefits. At a meeting on June 29, all employees, including the claimant were specifically told that smart phones could not be used to file claims as they do not have the memory capacity needed. All employees, including the claimant, were told that they could use computers at the local IWD office in Ottumwa to file their claims if need be. The claimant attended the session and was given the correct instructions for filing her claim for benefits.

The claimant attempted to file her claim from home using her tablet during the week that began July 2. She was not able to complete the filing using her tablet at her home as like a cell phone, it did not have the memory capacity needed to file the claim. The claimant chose not to go to

her local office in Ottumwa to use their computers to file her claim. The claimant could have gone to her local office on July 3, July 5, 6 or 7 but she chose not to do so. When she returned to work on July 10, she sought help from her human resources department. The claimant filed her claim from a computer at her workplace during the week beginning on July 9, 2017. Ms. Baker, the human resources manager called the Ottumwa local office on the claimant's behalf and was told that a request to have the claimant's claim backdated would be sent into the claims department. At no time was the claimant or Ms. Baker ever told that claimant's claim would be backdated. The claimant was notified by a decision dated July 14 that her request to backdate her claim had been denied. The claimant did receive the decision within ten days of it being mailed to her. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 24, 2017. No one at either the agency or her place of work told her not to file an appeal to the decision. The claimant did not file her appeal until August 14, 2017.

The department has not failed to recognize the expiration of the claimant's previous benefit year and there is not an interstate claim against another state which has been determined as ineligible.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal is untimely.

Iowa Code section 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, subsections 10 and 11, 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. 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 record shows that the appellant did 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 not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In the event that a higher authority should determine the claimant did file a timely appeal, for the reasons that follow, the administrative law judge concludes the claimant's request to backdate the claim is denied.

Iowa Admin. Code r. 871-24.2(1)h(1) and (2) provide:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual reports in person at a workforce development center and registers for work in accordance with paragraph "a" of this rule.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

Backdated prior to the week in which the individual reported if the individual presents to the department sufficient grounds to justify or excuse the delay;

There is scheduled filing in the following week because of a mass layoff;

The failure of the department to recognize the expiration of the claimant's previous benefit year;

The individual is given incorrect advice by a workforce development employee;

The claimant filed an interstate claim against another state which has been determined as ineligible;

Failure on the part of the employer to comply with the provisions of the law or of these rules;

Coercion or intimidation exercised by the employer to prevent the prompt filing of such claim;

Failure of the department to discharge its responsibilities promptly in connection with such claim, the department shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of potential rights to benefits, provided, that no such claim may be filed after the 13 weeks subsequent to the end of the benefit year during which the week of unemployment occurred. In the event continuous jurisdiction is exercised under the provisions of the law, the department may, in its discretion, extend the period during which claims, with respect to week of unemployment affected by such redetermination, may be filed.

The claimant had been given the correct instructions on how to file for unemployment. She could have chosen to use the computers the agency makes available for people to file claims but chose not to do so. Her failure to file her claim during the first week of unemployment because her own tablet would not work is not considered good cause reasons for having failed to file a claim during the first week of unemployment. Backdating is denied.

DECISION:

The July 14, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant did not file a timely appeal. The claimant's request to backdate the claim is denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs