

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALINE M MARINO-MORENO
Claimant

APPEAL NO. 21A-UI-13104-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant filed a May 27, 2021 late appeal from the February 3, 2021, reference 02, decision that held she was overpaid \$176.900 in regular benefits for two weeks between July 26, 2020 and August 8, 2020, based on the December 4, 2020 administrative law judge decision that held the claimant was not able and available for work during those two weeks. After due notice was issued, a hearing was held on July 17, 2021. The claimant participated in the hearing. Exhibit A, the online appeal, and Exhibit B, two screen shots of text messages, were received into evidence. The administrative law judge took office notice of the record of benefits paid to the claimant (DBRO), of the decision docketing record (NMRO), of the December 4, 2020 administrative law judge decision in Appeal Number 20A-UI-12984-DB-T, and the February 3, 2021, reference 02, overpayment decision.

The administrative law judge left the hearing record open through July 18, 2021 for the limited purpose of the allowing the claimant to submit back account records for the period of October 15-31, 2021, reflecting all deposits during that period. In the event the claimant submits said materials, they will be received into the hearing record as Exhibit C.

ISSUE:

Whether the claimant's appeal is timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On February 3, 2021, Iowa Workforce Development mailed the February 3, 2021, reference 02, decision to the claimant's Des Moines last-known address of record. The decision held that the claimant was overpaid \$176.900 in regular benefits for two weeks between July 26, 2020 and August 8, 2020, based on the December 4, 2020 administrative law judge decision that held the claimant was not able and available for work during those two weeks. The reference 02 overpayment decision stated that the decision would become final unless an appeal was postmarked by February 13, 2021 or was received by the Appeal Section by that date. February 13, 2021 was a Saturday. February 14, 2021 was a Sunday. February 15, 2021 was

Presidents' Day, a federal holiday on which the United States Postal Office was closed. According, the next working day following February 13, 2021 was Tuesday, February 16, 2021. The claimant received the reference 02 decision in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal by the February 16, 2021 extended deadline. On May 27, 2021, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal on May 27, 2021. The claimant does not have an answer why she waited more than three months after the appeal deadline to file an appeal.

REASONING AND CONCLUSIONS OF LAW:

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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted

by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely. The evidence establishes that the claimant received the February 3, 2021, reference 02, overpayment decision in a timely manner, had a reasonable opportunity to file an appeal by the February 16, 2021 extended deadline, but did not file an appeal until May 27, 2021. The claimant unreasonably delayed filing the appeal until May 27, 2021. The late filing of the appeal was attributable to the claimant and was not caused by Iowa Workforce Development or the United States Postal Service. There is not good cause to deem the late appeal a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the overpayment decision from which the claimant appeals. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the February 3, 2021, reference 02, decision is untimely. The decision that held the claimant was overpaid \$176.900 in regular benefits for two weeks between July 26, 2020 and August 8, 2020, based on the December 4, 2020 administrative law judge decision that held the claimant was not able and available for work during those two weeks, remains in effect.



James E. Timberland
Administrative Law Judge

July 27, 2021
Decision Dated and Mailed

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