

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CARMEN M WINKEL-HIRACHETA
Claimant

APPEAL NO: 14A-UI-05774-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/28/13

Claimant: Appellant (2)

Section 96.3-7 - Recovery of Overpayment of Benefits
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Carmen M. Winkel-Heracheta (claimant) appealed a representative's May 6, 2014 decision (reference 08) that concluded she was overpaid unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2014. The claimant participated in the hearing. This appeal was consolidated for hearing with one related appeal, 14A-UI-05773-DT. 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.

ISSUES:

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on May 6, 2014. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 16, 2014. The appeal was not filed until it was hand-delivered to a local Agency office on June 3, 2014, which is after the date noticed on the disqualification decision. The claimant made her appeal on that date after learning about the issuance of the issuance of a related separation disqualification decision by phone on May 28 and getting a copy when she visited the local Agency office on June 3.

A representative issued a decision dated May 5, 2014 (reference 07) that concluded the claimant was disqualified from receiving benefits after a separation from employment from Labor Ready Midwest, Inc. (employer). As determined in the concurrently issued decision in appeal 14A-UI-05773-DT, that decision has been reversed.

The overpayment decision was issued in this case as a result of the May 5, 2014 (reference 07) disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 not 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 due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Rule 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 § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

The issue in this case is whether the claimant is overpaid benefits of \$973.62.00.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7. In this case, the claimant received benefits for which she subsequently was deemed ineligible in the representative's decision issued on May 5, 2014. The disqualification from that decision has been reversed in the concurrently issued decision in 14A-UI-05773-DT. Therefore, the administrative law judge concludes that the claimant was not overpaid benefits.

DECISION:

The representative's May 6, 2014 decision (reference 08) is reversed. The claimant is not overpaid benefits.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs