

Iowa Department of Inspections and Appeals  
Administrative Hearings Division  
Wallace State Office Building, Third Floor  
Des Moines, Iowa 50319

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Sean A. Norfolk	)	DIA Case No. 18IWDUI0029
1115 Longview Drive	)	IWD Appeal No. 17A-UI-09553
Marion, IA 52302,	)	
	)	
Appellant,	)	<b>PROPOSED DECISION</b>
	)	
v.	)	
	)	
Iowa Workforce Development,	)	OC:05/15/2016
	)	Claimant: Appellant (6)
Respondent.	)	

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**STATEMENT OF THE CASE**

Sean Norfolk filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated September 5, 2017. In this decision, IWD determined that Norfolk was overpaid \$2,809.94 in unemployment insurance benefits for the time period between June 19, 2016 and March 25, 2017. The decision states that the overpayment resulted from the claimant incorrectly reporting earnings.

The case was transmitted from IWD to the Department of Inspections and Appeals to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on September 26, 2017. On October 19, 2017, a telephone appeal hearing was held before Administrative Law Judge Emily Kimes-Schwiesow. Investigator Jenifer Lara represented IWD. IWD exhibits 1 through 8 were admitted as evidence. Appellant Sean Norfolk appeared and presented testimony.

**ISSUES**

Whether the Appellant filed a timely appeal.

Whether IWD correctly determined Appellant was overpaid unemployment insurance benefits, and if so, whether the overpayment was correctly calculated.

Whether IWD properly imposed a fifteen percent penalty because the overpayment was a result of misrepresentation.

**FINDINGS OF FACT**

After conducting an investigation into Norfolk's unemployment insurance benefits, IWD

issued a decision dated September 5, 2017 in which it determined that Norfolk was overpaid \$2,908.94 in unemployment insurance benefits between June 19, 2016 and March 25, 2017 because he incorrectly reported earnings. The decision indicated the decision would become final if an appeal was not postmarked or received by the IWD appeal section by September 15, 2017. Norfolk filed an appeal by delivering a letter in person to his local IWD office in Cedar Rapids on September 18, 2017. The envelope is date stamped as received on September 18, 2017.

### **REASONING AND CONCLUSIONS OF LAW**

Iowa Code section 96.6(2) requires that an appeal of a representative's decision must be filed by a claimant or other interested party "after notification or within ten calendar days after notification was mailed to the claimant's last known address." The Department's regulations provide that the effective date of the appeal is established by either the postmark on the appeal or the date stamp.<sup>1</sup> The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.<sup>2</sup>

Norfolk filed his appeal on September 18, 2017. At hearing, Norfolk acknowledged that did not mail the appeal letter, but delivered it in person to the local IWD office in Cedar Rapids. The appeal letter envelope is date stamped as received on September 18, 2017, more than ten days after notification was mailed.

Under these circumstances, Norfolk's appeal was not timely. Since the appeal was not timely filed, I have no jurisdiction to consider whether IWD correctly determined that Norfolk was overpaid.

### **DECISION**

The Appellant's appeal is dismissed because it was not timely filed.

Dated this 7th day of November, 2017.



Emily Kimes-Schwiesow  
Administrative Law Judge

cc:

Appellant (By Mail)  
Emily Chafa, IWD UI Appeals Manager (By Email)  
Nicholas Olivencia, IWD (By Email)  
Joni Benson, IWD (By Email)  
Jenifer Lara, IWD (By Email)

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<sup>1</sup> 871 Iowa Administrative Code (IAC) 26.4(2).

<sup>2</sup> *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).