

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

THAKESH RAI
Claimant

APPEAL NO. 22A-UI-05958-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
PL 116-136, sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On March 13, 2022, the claimant Thakesh Rai appealed the September 23, 2021, (reference 04) decision that concluded the claimant was overpaid Federal Pandemic Unemployment Compensation (“FPUC”) benefits in the amount of \$3,600.00 for the six-week period ending July 11, 2020. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Monday, April 18, 2022. Appeal numbers 22A-UI-05955-LJ-T, 22A-UI-05956-LJ-T, 22A-UI-05957-LJ-T, and 22A-UI-05958-LJ-T were heard together and created one record. The claimant, Thakesh Rai, participated. An English/Nepali interpreter from CTS Language Link provided interpretation services for the hearing. Claimant’s Exhibit A was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision finding claimant was overpaid \$3,600.00 in FPUC benefits for the six weeks between May 31, 2020, and July 11, 2020, was mailed to his address of record on September 23, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 4, 2021. The appeal was not filed until March 13, 2022, which is after the date noticed on the disqualification decision. Claimant does not recall receiving either the decision related to the refusal to return upon recall or the overpayment decisions stemming from that underlying decision. He received an Overpayment Statement of Amount Due dated January 18, 2022. This appears to be the document that triggered claimant filing an appeal on March 13, 2022. Claimant had been in Nepal between December 2021 and February 2022, and he did not receive the statement until he returned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of*

LeClaire, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant was not a believable witness. While he testified that he received the Overpayment Statement of Amount Due on December 1, 2021, the statement itself was not generated by the agency until the statement date of January 18, 2022. Therefore, claimant could not have received it in 2021. Additionally, claimant's written statement attached to the appeal contradicts his testimony and states he did not receive the overpayment statement until after his return from Nepal.

Here, credible agency information indicates the claimant would have received the decision in the mail in late September 2021 and, therefore, would have had an opportunity to file an appeal prior to the appeal deadline. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

DECISION:

The September 23, 2021 (reference 04) decision is affirmed. The claimant failed to file a timely appeal. The decision of the representative must remain in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

April 22, 2022
Decision Dated and Mailed

lj/lj