

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GENE A HOLTHAUS
Claimant

APPEAL 21A-UI-06270-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code §.96.6(2) - Timeliness of Appeal
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Gene Holthaus (claimant) appealed a representative's January 26, 2021, decision (reference 04) that found him overpaid \$1,500.00 in Lost Wage Assistance Program benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on May 4, 2021. The claimant participated personally.

Department's Exhibit D-1 was admitted to the record. The administrative law judge took official notice of the administrative file. 21A-UI-06268.S1, 21A-UI-06270.S1, and 21A-DUA-01185.S1 were heard at the same time.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was overpaid Lost Wage Assistance Program benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, finds that: The representative's decision dated July 27, 2020, reference 01, concluded the claimant was disqualified from receiving unemployment insurance benefits. That decision was affirmed by 20A-UI-09269-JC.

A disqualification decision was mailed to claimant's last known address of record on January 26, 2021. He did not receive the decision within ten days. He received it on February 19, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 5, 2021. The appeal was not filed until February 24, 2021, which is after the date noticed on the disqualification decision. He waited to file his appeal because he wanted to talk to the agency before he filed his 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 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).

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 not receive the decision within ten days of the mailing date. After he found out about the decision he took five more days to file his appeal.

The administrative law judge concludes that his failure to file a timely appeal after receiving notice of the decision 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 alternative, the administrative law judge concludes the claimant was overpaid \$1,500.00 in Lost Wage Assistance Program benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

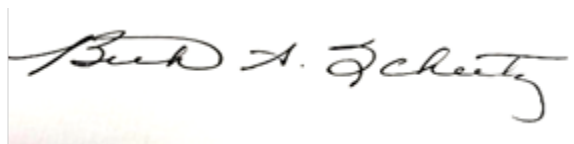
7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since the decision disqualifying the claimant was affirmed and it has become final agency action, the claimant was overpaid \$1,500.00 in LWAP benefits. The benefits must be recovered, even when the claimant acts in good faith and is not otherwise at fault.

DECISION:

The January 26, 2021, reference 04, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant was overpaid \$1,500.00 in LWAP benefits and those benefits must be repaid.



Beth A. Scheetz
Administrative Law Judge

May 12, 2021
Decision Dated and Mailed

bas/kmj