

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ABBIE FELLINGHAM
Claimant

APPEAL NO. 22A-UI-04879-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATION & RECOVERY UNIT**

OC: 05/03/20
Claimant: Appellant (1)

Iowa Code §96.6(2) – Timeliness of Appeal
Iowa Code §96.3(7) – Overpayment, Lost Wages Assistance Payments
Iowa Code §96.5(8) – Administrative Penalty
Iowa Code §96.16(4) - Misrepresentation

STATEMENT OF THE CASE:

On February 17, 2022, Abbie Fellingham (claimant) filed a late appeal from the February 4, 2022 (reference 03) decision that held the claimant was overpaid \$1,500.00 in Lost Wages Assistance Payments (LWAP) for five weeks between July 26, 2020 and August 29, 2020, due to a failure to report wages from employment with Cedar Foundation, Inc. The decision also stated a 15 percent penalty would be added to the overpayment amount due to misrepresentation and that a further administrative penalty would be assessed in the 36 months following the last week of misrepresentation. After due notice was issued, a hearing was held on March 31, 2022. Claimant participated. Kendra Mills, Investigator II, appeared on behalf of Iowa Workforce Development Investigation & Recovery Unit. The parties waive defects in the hearing notices and formal notice in association with those defects. There were three matters set for a consolidated hearing: 22A-UI-04876-JT-T, 22A-UI-04878-JT-T and 22A-UI-04879-JT-T. Exhibit A, the appeal letter, and Department Exhibits 1-1 through 6 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KCCO and WAGE-A.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

On February 4, 2022, Iowa Workforce Development mailed two overpayment decisions to the claimant at her Clarence, Iowa address of record. The reference 02 decision held the claimant was overpaid \$6,600.00 in Federal Pandemic Unemployment Compensation (FPUC) for 11 weeks between May 3, 2020 and July 25, 2020, due to a failure to report wages from employment with Cedar Foundation, Inc. The reference 03 decision held the claimant was overpaid \$1,500.00 in Lost Wages Assistance Payments (LWAP) for five weeks between

July 26, 2020 and August 29, 2020, due to a failure to report wages from employment with Cedar Foundation, Inc. Each decision stated a 15 percent penalty would be added to the overpayment amount due to misrepresentation and that a further administrative penalty would be assessed in the 36 months following the last week of misrepresentation. Each decision stated the decision would become final unless an appeal was postmarked by February 14, 2022 or was received by the Appeals Section by that date. Both decisions were delivered in a timely manner, prior to the February 14, 2022 deadline for appeal. Though the claimant provided both a street address and a post office box number to Iowa Workforce Development as the address to which correspondence should be directed, the claimant does not receive mail service at her home and has to go to the local post office to retrieve her mail from her assigned post office box. The claimant has lived in the small, rural community for several years. The two overpayment decisions in question were delivered to the post office box. When the claimant checked her box on February 9, 2022, the decisions were not there. The claimant was aware that she would be receiving unemployment insurance overpayment decisions following an investigative interview. The claimant did not check the post box again until February 15, 2022, after the appeal deadline applicable to the two decisions had passed. The two overpayment decisions were there, along with a reference 01 overpayment decision that had been mailed on February 7, 2022 and that had a February 17, 2022 appeal deadline. On February 17, 2022, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal on February 17 and treated it as also a late appeal from the reference 02 and 03 decisions.

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 appeal. The evidence establishes that the February 4, 2022 (reference 03) was delivered to the claimant's post office box in a timely manner and that the claimant had a reasonable opportunity to file an appeal by the February 14, 2022 appeal deadline. The claimant unreasonably failed to check her post office box during the period of February 10 through 14, 2022, despite being on notice that she would receive overpayment decisions. The late filing of the appeal was attributable to the claimant and was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the decision from which the claimant appeals in the present matter. 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 4, 2022 (reference 03) decision was untimely. The February 4, 2022 (reference 03) LWAP overpayment decision remains in effect.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

April 11, 2022
Decision Dated and Mailed

jet/mh