

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH M MAXTED
Claimant

APPEAL NO: 13A-UI-02192-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/16/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 12, 2013, reference 04, that held she is overpaid benefits \$1,398.00 for a six-week period ending November 26, 2011 due to an March 23, 2012 EAB decision that held she was discharged for misconduct. A telephone hearing was held on March 20, 2013. The claimant participated. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The department mailed the overpayment decision to claimant's address of record on February 12, 2013 with an appeal deadline date of February 22. The claimant failed to note the appeal deadline date and the written instructions she could appeal by mail.

Claimant was ill during the appeal period and she had a friend drive her to a doctor appointment. The doctor prescribed medication for chest congestion and an ear infection. Claimant went to her local Workforce center on February 25 where she signed and submitted an appeal form the department faxed that day to UI appeals. Claimant acknowledges she received the \$1,398.00 benefit, but it would be a financial hardship to pay it back.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

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 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 have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal. Claimant timely received the decision but her failure to timely submit an appeal is based on her failure to note the appeal deadline date with instructions. Claimant's illness was not serious as to merit hospitalization and she was well enough to make an out-of-home doctor appointment. Good cause for the appeal delay is not established.

DECISION:

The department decision dated February 12, 2013, reference 04, is affirmed. The claimant failed to file a timely appeal, and the department decision she is overpaid benefits \$1,398.00 remains in force and effect.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll