

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LORI A LAKEY

Claimant

APPEAL NO. 22A-UI-00471-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 07/05/20

Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Lori Lakey, filed a late appeal from the February 16, 2021, reference 02, decision that denied benefits effective July 12, 2020, based on the deputy's conclusion that the claimant was still employed under the same hours and wages as in the original contract of hire and was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on January 26, 2022. Claimant participated. Scott Coons represented the employer. There were three appeal numbers set for a consolidated hearing: 22A-UI-00471-JTT, 22A-UI-00473-JTT and 22A-UI-00474-JTT. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records, the reference 02, 03 and 04 decisions, DBIN, KPYX, KFFV and WAGE-A.

ISSUE:

Whether the appeal from the February 16, 2021, reference 02, decision 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: The claimant, Lori Lakey, established an original claim for benefits that was effective July 5, 2020.

On February 16, 2021, Iowa Workforce Development mailed the February 16, 2021, reference 02, decision to the claimant's Davenport last-known address of record. The reference 02 decision denied benefits effective July 12, 2020, based on the deputy's conclusion that the claimant was still employed with The University of Iowa under the same hours and wages as in the original contract of hire and was not partially unemployed within the meaning of the law. The referenced 02 stated that the decision would become final unless an appeal was postmarked by February 26, 2021 or was received by the Appeals Section by that date. The claimant received the reference 02 in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal from the decision by the appeal deadline or any point prior to December 3, 2021.

The claimant asserts that at some point after she received the February 16, 2021, reference 02, decision she called Iowa Workforce Development customer service and that an Agency representative told her the Agency had sent out many letters and to not worry about it unless the claimant heard from the Agency again. The claimant is unable to provide the date of the purported contact or the name of the purported IWD representative.

On November 24, 2021, Iowa Workforce Development mailed the reference 03 overpayment decision to the claimant's address of record. The reference 03 decision held the claimant was overpaid \$493.00 in regular benefits for the week that ended July 18, 2020, based on the February 16, 2021 decision that denied benefits in connection with the able and available determination. The reference 03 decision included a December 4, 2021 deadline for appeal.

On November 29, 2021, Iowa Workforce Development mailed the reference 04 overpayment decision to the claimant's address of record. The reference 04 decision held the claimant was overpaid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the week that ended July 18, 2020, due to the reference 02 decision that denied benefits in connection with the determination that the claimant was still employed under the same hours and wages. The reference 04 decision included a December 9, 2021 deadline for appeal.

On December 3, 2021, the claimant completed and transmitted an online appeal. The appeal indicates it is from the reference 03 decision, but references receipt of a decision on or about February 16, 2021. The appeal makes no reference to a purported discussion with an IWD agent, including no reference to a discussion with an IWD agent regarding the reference 02 decision. The Appeals Bureau received the appeal on December 3, 2021 and treated it as an appeal from the reference 02, 03 and 04 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).

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 Ct. 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.*

The evidence in the record establishes an untimely appeal from the February 16, 2021, reference 02, decision. The claimant received the reference 02 decision in a timely manner, had a reasonable opportunity to file an appeal by the February 26, 2021 appeal deadline, but unreasonably delayed filing the appeal to December 3, 2021. The weight of the evidence

establishes the late filing of the appeal 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). The claimant's assertion that she spoke to an Agency representative who told her not to worry about the reference 02 disqualification decision is not credible. The claimant is unable to say when the purported discussion took place or the name of the Agency representative with whom she spoke. The administrative law judge is hard-pressed to believe an IWD representative told the claimant not to worry about a decision adverse to the claimant. Such utterance would be entirely inconsistent with Agency training and protocol. Because the appeal from the February 16, 2021, reference 02, decision was untimely, administrative law judge lacks jurisdiction to disturb that decision. 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 16, 2021, reference 02, decision was untimely. The decision that denied benefits effective July 12, 2020, based on the deputy's conclusion that the claimant was still employed same hours and wages and, therefore, not partially unemployed, remains in effect and applies only to the week that ended July 18, 2020.



James E. Timberland
Administrative Law Judge

February 17, 2022
Decision Dated and Mailed

jet/scn