

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEIDI L SCHWAB
Claimant

APPEAL 18A-UI-11617-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 06/29/14
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 24, 2015 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid unemployment insurance benefits because claimant failed to report earnings from Rose International between August 31, 2014 and October 18, 2014. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on December 14, 2018. The claimant, Heidi L. Schwab (k/n/a Heidi L. Downs), participated personally. Kevan Irvine participated on behalf of IWD. IWD Exhibits 1 through 3 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

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:

Claimant filed an initial claim for unemployment insurance benefits effective June 29, 2014. Her weekly benefit amount was \$408.00. See Exhibit 1.

IWD began an investigation into whether the claimant failed to report wages earned when it received an automated wage cross match. An investigator was assigned to the case and a preliminary audit notice was mailed to the claimant. Claimant received the preliminary audit notice marked Exhibit 1-9 in the mail notifying her that IWD was investigating whether she properly reported wages earned from Rose International from July 5, 2014 through October 11, 2014.

Exhibit 1-9 specifically stated “[a]n appealable decision will be mailed to you based on the evidence on file. This decision may state that you are overpaid in unemployment insurance benefits and that you will be required to repay the overpayment amount to Iowa Workforce Development.” See Exhibit 1-9. The notice further states, “[u]nemployment insurance overpayments may result in denial of future benefits assessment of a 15 percent monetary penalty” See Exhibit 1-9. The notice further lists the contact information (address, phone number, email address) of the investigator. See Exhibit 1-9.

Claimant participated in a telephone interview with IWD representative Michelle Saddoris regarding whether she had failed to report wages earned with Rose International. Claimant told Ms. Saddoris that she did not think she was an employee of Rose International and claimant was given additional time to forward documentation regarding this belief to Ms. Saddoris. After claimant spoke to a representative with Rose International, the employer confirmed she was an employee and at that point claimant did not forward additional information to Ms. Saddoris about the issue.

A decision dated August 24, 2015 (reference 04) was mailed to the claimant at her correct address of record. That decision found that claimant was overpaid unemployment insurance benefits of \$2,538.00 due to her failure to report wages earned with Rose International Inc. It also assessed a 15% penalty due to misrepresentation. Claimant does not recall whether she received the August 24, 2015 (reference 04) decision in the mail.

Claimant began making payments towards the debt owed in December of 2015. See Exhibit 3. When she spoke to an IWD representative in 2015, she was told a decision had been issued that established the overpayment amount and penalty and that she failed to file an appeal. Claimant did not request a copy of this decision. At this time in 2015, she was told by the IWD representative that there was nothing she could do since the appeal deadline had passed. She continued to make monthly payments on the overpayment balance through November of 2018. See Exhibit 3.

Sometime in 2018, claimant received a notification that her taxes would be intercepted to pay towards the overpayment and penalty amounts owed. Claimant telephoned IWD at that time and was told that she could file an appeal to the decision. Claimant filed an appeal to the August 24, 2015 (reference 04) decision on November 30, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant failed to file a timely appeal. Without a timely appeal, the administrative law judge lacks jurisdiction to issue a decision regarding the merits of the case at hand.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

(emphasis added).

An appeal must be filed within ten calendar days after notification of the decision was mailed or after notification in order to be timely. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). Further, the plain language of the statute prescribing the time for notice of appeal clearly limits the time to do so. At least in the absence of invalidity as applied to a particular factual situation such as *Hendron*, compliance with the appeal notice provisions is jurisdictional. *Id.*; see also *Hendren v. Iowa Employment Security Comm.*, 217 N.W.2d 255 (Iowa 1974)(denial of due process when claimant learned that the decision had been held and not delivered to her by the United States post office).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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.* The administrative law judge finds that the claimant has not provided credible testimony that her delay in filing an appeal was due to delay or other action by the United States Postal Service. Further, any delay due to agency misinformation is irrelevant because the misinformation occurred after the appeal deadline had already passed.

It is the claimant's burden to establish that the delay in her filing an appeal was due to United States Postal Service action or agency misinformation or error. Iowa Admin. Code r. 871-24.35(2). The claimant has failed to establish that the reason she failed to file an appeal for over a three-year time period was due to the United States Postal Service error or agency misinformation. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the issue on appeal. Iowa Code § 96.6(2).

DECISION:

The claimant failed to file a timely appeal. The August 24, 2015 (reference 04) unemployment insurance decision is affirmed and shall remain in effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs