

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL (GALES) CRAWFORD
Claimant

APPEAL NO: 18A-UI-08887-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/09/11
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 8A.504 – Setoff Procedures (IDAS)
Iowa Admin. Code r. 871-25.16 – State Payment Offset
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 6, 2018, (reference 06) unemployment insurance decision that gave notice that a vendor payment was going to be withheld to apply to an overpayment of unemployment insurance benefits, which the claimant owed to Iowa Workforce Development. The claimant was properly notified about the hearing. A telephone hearing was held on September 11, 2018. The claimant participated personally. The administrative law judge took official notice of the administrative records including the fact-finding documents. Department Exhibit D-1 (Appeal letter) was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Is the withholding of the claimant's vendor payment to offset a prior overpayment of benefits authorized?

FINDINGS OF FACT:

Having reviewed the administrative record, the administrative law judge finds: The claimant established a claim for unemployment insurance benefits effective January 9, 2011. At the time, the claimant's legal name was April Gales. Her legal name is now April Crawford.

A representative's decision dated February 13, 2014, (reference 04) notified claimant of an overpayment. The overpayment amount was \$2,840.00. The claimant did not appeal the decision, which has become final. In subsequent years, portions of the overpayment have been recovered through a tax return offset and vendor payment offset (See administrative record). The claimant has not paid off the balance of the overpayment, which is \$1,186.58.

An initial unemployment insurance decision (Reference 06) that gave notice that a vendor payment was going to be withheld to apply to an overpayment of unemployment insurance benefits, which the claimant owed to Iowa Workforce Development, was mailed to the claimant's last known address of record on August 6, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 16, 2018. The appeal was not filed until August 23, 2018, which is after the date noticed on the disqualification decision (Department Exhibit D-1).

The reason the claimant did not appeal the decision sooner is that she was in the process of moving out of her home. It was a valid address at the time of mailing and she did not formally move until August 16, 2018, but acknowledged she only checked mail once or so during the period to appeal and relied upon her husband to notify her of mail. During this period, the claimant was staying with family members. The claimant stated she has had a rough period of time with personal matters related to her family and frequent moves. Upon moving and opening boxes containing old mail, she saw the initial decision and contacted IWD to see if she could still appeal. She then filed her appeal online effective August 23, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is untimely.

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 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 is sympathetic to the claimant's personal situation, in which she resided with family and collected mail from a separate address before moving out. However, the address on file was a valid address and the claimant was responsible for routinely checking the mail to ensure she did not miss time sensitive matters. Based on the evidence presented, the administrative law judge concludes that the claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was *not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

However, in the alternative, even if the claimant's appeal was deemed timely, the administrative law judge concludes the withholding of the vendor payment to recover the prior overpayment is valid.

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

7. Recovery of overpayment of benefits.

Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

Iowa Admin. Code r. 871-25.16 authorizes the Iowa Workforce Development Department to withhold the state payment owed to the claimant to apply to an overpayment of benefits which that same claimant owes to the Iowa Workforce Development Department so long as both amounts are at least \$50.00. More specifically, Iowa Admin. Code r. 871-25.16(4) provides, "Any appeal by the individual is limited to the validity of the department's authority to recoup the overpayment through offset." Iowa Code § 96.11(16) allows reimbursement of setoff costs.

Because the claimant owes the Iowa Workforce Development Department \$1,186.58 in benefits she received in 2011, to which she was not entitled and she has an Iowa vendor payment of at least \$50.00. Therefore, the Iowa Workforce Development Department is legally authorized to withhold that state payment up to the amount of the overpayment of benefits, plus a \$7.00 transfer fee, which the claimant owes to the Iowa Workforce Development Department.

DECISION:

The unemployment insurance decision dated August 6, 2018, (reference 06) is affirmed. The appeal is untimely. The appeal in this case was not timely, and the decision of the representative remains in effect: The Iowa Workforce Development Department has legal authority to withhold the state vendor payment owed to the claimant to apply to the overpayment of benefits, which that individual owes to the Iowa Workforce Development Department.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn