

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KADIE COLEMAN
Claimant

APPEAL NO. 21A-UI-03632-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/21/19
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Public Law 116-136, Section 2107 – Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

The claimant filed a late appeal from the December 14 2020, reference 03 decision that held the claimant was overpaid \$3,234.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits for the 11-week period ending June 27, 2020, based on a July 30, 2020 decision that disqualified the claimant for PEUC benefits. After due notice was issued, a hearing was held on March 16, 2021. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Numbers 21A-UI-03631-JTT and 21A-UI-03633-JTT. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN, the monetary record, KPYX, and interstate communication between IWD and the State of Kentucky. The administrative law judge took official notice of the July 30, 2020, reference 02, decision and the December 14, 2020, reference 03 and reference 04 overpayment decisions. The administrative law judge also took official notice of Kentucky Labor Cabinet Office of Unemployment Insurance Claimant Guide and Information About Unemployment Insurance Benefits document.

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 December 14, 2020, IWD mailed the reference 03 and reference 04 overpayment decisions to the claimant at her last known address of record. The address of record was the claimant's mother's home in Mount Pleasant. By the time the decisions were mailed to the claimant, the claimant had relocated to Cheswick, Iowa, a 1.5 hour drive from her mother's home. The claimant continued to have her mail directed to her mother's home in Mount Pleasant after her move. The claimant did not regularly check in with her mother regarding mail received at her mother's address and infrequently traveled to her mother's home to collect her accumulated mail. The reference 03 and reference 04 decisions arrived at the address of record in a timely manner, prior to the deadline for appeal. The reference 03 decision held the claimant was overpaid \$3,234.00 in PEUC benefits for the 11-week period ending June 27, 2020, based on

the earlier decision that disqualified the claimant for PEUC benefits. The reference 04 decision held that the claimant was overpaid \$6,600.00 in Federal Pandemic Unemployment Compensation (FPUC) for the 11-week period ending June 27, 2020, based on the determination that the claimant was not eligible for benefits for the period in question. The reference 03 and reference 04 decisions each stated that the decision would become final unless an appeal was postmarked by December 24, 2020 or was received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. State of Iowa offices were closed on December 24, 2020 pursuant to the Governor's directive. The next working day was Monday, December 28, 2020.

The claimant traveled to her mother's home shortly before the Christmas holiday and collected her accumulated mail at that time. The claimant elected to wait until she got back home to open and review her mail. The claimant did not open and review the IWD decisions until after the extended December 28, 2020 appeal deadline that was applicable to the reference 03 and reference 04 decisions.

The claimant waited to January 23, 2021 to complete and transmit an online appeal. The appeal references only the reference 03 overpayment decision. The Appeals Bureau received the appeal on January 23, 2021 and treated as a late appeal from all both December 14, 2020 decisions and from a July 30, 2020, reference 02, decision.

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). 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 weight of the evidence establishes an untimely appeal from the December 14, 2020, reference 03, overpayment decision. The decision was received at the address of record in a timely manner. The claimant failed to take timely and reasonable steps to collect, review, and respond to the decision. The weight of the evidence establishes that the delay in filing the appeal was attributable to the claimant's actions and decision-making, rather than attributable to IWD or to the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). The late filing of the appeal involved unreasonable delay that extended beyond the December 28, 2020 extended appeal deadline to January 23, 2021. 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). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the December 14, 2020, reference 03, 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 was untimely. The December 14 2020, reference 03, decision that held the claimant was overpaid \$3,234.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits for the 11-week period ending June 27, 2020, remains in effect.



James E. Timberland
Administrative Law Judge

March 25, 2021
Decision Dated and Mailed

jet/scn

Note to Claimant: This decision determines you have been overpaid PEUC under the CARES Act. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.