

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH S WILCOX
Claimant

APPEAL 18A-UI-10213-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 01/28/18
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(4) – Determination of Benefits
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Sarah S. Wilcox (claimant) appealed an unemployment insurance decision dated August 2, 2018, reference 04, that concluded she was overpaid \$2,156.17 in unemployment insurance benefits due to a corrected monetary record mailed on August 1, 2018. A telephone hearing was held on October 25, 2018. Proper notice of the hearing was given to the claimant. The claimant participated in the hearing. The Department's Exhibits D1 through D4 were admitted into the record. The administrative law judge took official notice of the administrative record, including the claimant's wage history (WAGEA) and the February 13, 2018 monetary record.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

The claimant worked for Riverbend Holdings, LLC (Riverbend) beginning in June 2016 as a full-time employee with a varied schedule earning \$12.00 an hour plus commissions. She earned wages in the amounts of \$7,553.00 during the fourth quarter of 2016, \$5,239.00 during the first quarter of 2017, and \$277.00 in the second quarter of 2017. The claimant separated from employment on February 27, 2017. Following her separation, she reactivated a claim dated June 12, 2016. She was allowed benefits based on her separation from Riverbend.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 28, 2018 and her base period included wage credits earned between October 1, 2016 and September 30, 2017 or the fourth quarter of 2016 through the third quarter of 2017. On February 13, 2018 a monetary record was mailed to the claimant. The monetary record showed the claimant earned wages from Riverbend in the amount of \$15,106.97 in the fourth quarter of 2016, \$10,479.01 in the first quarter of 2017, and \$554.01 in the second quarter of 2017. As a result of the wages credits in her base period, the claimant's weekly benefit amount (WBA) was

\$490.00 and her maximum benefit amount (MBA) was \$12,740.00. The claimant received the monetary record but did not review it carefully for any discrepancies.

The claimant filed for and received a total of \$12,113.00 in unemployment insurance benefits between January 28, 2018 and July 21, 2108. On or about July 31, 2018, Iowa Workforce Development (IWD) determined Riverbend had over reported the claimant's wages earned during her base period. The claimant's wages were corrected and a new monetary record was mailed on August 1, 2018 showing the correct wages earned from Riverbend. Based on the corrected wages, the claimant's WBA was still \$490.00 but her MBA was reduced to \$9,956.83. On August 2, 2018, IWD determined the claimant had been overpaid unemployment insurance benefits in the amount of \$2,156.17 due to the reduction in her MBA.

The claimant moved and changed her address in the IWD system on July 23, 2018. She also changed her address with the United States Postal Service via the online portal. However, due to an error, she did not begin receiving mail until the middle of August 2018. The claimant did not receive the monetary record mailed on or about August 1, 2018.

The overpayment decision was mailed to the claimant's last known address of record on August 2, 2018. The decision contained a warning that an appeal needed to be filed by August 12, 2018. The claimant received the decision after the deadline to file an appeal but before September 1, 2018. The claimant contacted IWD to discuss the issue and learned her monetary record had changed. The representative told her an appeal would not be timely but she could still request an appeal. The claimant decided not to file an appeal at that time as she did not feel anyone could adequately explain to her how the overpayment was calculated or on what it was based. On September 14, 2018, an Overpayment Statement of Amount Due was mailed to the claimant. The claimant received the statement within four to five days of the mailing. The appeal to the overpayment decision was not filed until October 10, 2018 and the claimant had no explanation as to why she waited until that date to file the appeal.

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, in pertinent part:

Filing – determination – appeal.

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.

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.

Iowa Code section 96.3(4) provides:

Payment – determination – duration – child support intercept.

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

| If the number of dependents is: | The weekly benefit amount shall equal the following fraction of high quarter wages: | Subject to the following maximum percentage of the statewide average weekly wage: |
|---------------------------------|---|---|
| 0 | 1/23 | 53% |
| 1 | 1/22 | 55% |
| 2 | 1/21 | 57% |
| 3 | 1/20 | 60% |
| 4 or more | 1/19 | 65% |

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "*dependent*" means dependent as defined in section 422.12, subsection 1, paragraph "a", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "*Nonworking spouse*" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

Iowa Admin. Code r. 871-24.9(1)b provides:

Determination of benefits rights.

Monetary determinations

b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

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. Bd. 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 to the unemployment insurance decision and monetary record. The claimant received the decision in the middle of August 2018 and learned about the change to her monetary record and overpayment. The IWD representative correctly informed her that she could still file an appeal although timeliness would be an issue. The claimant did not file the appeal at that time and waited approximately two months to file the appeal. The claimant's decision to wait when she knew of the adverse determinations does not constitute good cause for the late filing. As the appeal was not timely filed pursuant to Iowa Code § 96.6(2), 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).

DECISION:

The August 2, 2018, reference 04, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn