

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE HAUGLAND
Claimant

APPEAL 17A-UI-11215-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/23/17
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 13, 2017, (reference 05) that concluded she was overpaid \$279.00 in unemployment insurance benefits. A telephone hearing was held on November 21, 2017. Proper notice of the hearing was given to the claimant. The claimant participated in the hearing. Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 23, 2017. The claimant filed for and received a total of \$279.00 in unemployment insurance benefits for the week ending September 30, 2017.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 17A-UI-11212-JC-T.

An initial decision establishing the overpayment of benefits was mailed to the claimant on October 13, 2017. The decision contained a warning that an appeal must be filed by October 23, 2017. The claimant did not file her appeal until November 2, 2017 (Department Exhibit D-1).

The claimant stated her failure to make job searches before October 14, 2017 or file a timely appeal was attributed to her non-receipt of all documents. The claimant acknowledged she did

not read the claimant handbook as directed when she opened her unemployment claim in April 2017. The claimant handbook directs claimants to notify IWD of name or address changes.

On July 20, 2017, the claimant provided IWD the mailing address of 10386 250th Street, Clear Lake Iowa 50428 (See KLOG). The claimant stated she moved from that address on August 1, 2017. She did not update her address with IWD until October 27, 2017 (See KLOG). As a result, the corrected monetary decision dated September 19, 2017 and the reference 02, 03, 04, 05 and 06 decisions were mailed to the incorrect or former address. The claimant asserted she had notified IWD on three occasions of her change of address but could not confirm which number she called to notify, who she spoke to or provide any details. She thought she notified IWD in September. The claimant did acknowledge that it “escaped my head” to immediately notify IWD of her change of address.

The claimant also reported that she had requested the postal service forward her mail from 10386 250th Street, Clear Lake Iowa 50428 to her new address, but still did not receive the September 19, 2017 monetary decision, or any of the reference 02, 03, 04, 05 and 06 decisions.

As a result of the claimant not updating IWD of her new address, the claimant asserted she did not receive the updated monetary determination that informed her that she was to make job searches. She delayed making job searches until a fact-finding interview in October 2017, where she learned she was required to make job searches. (The claimant began making her job searches effective the week ending October 14, 2017.)

The claimant reported she learned that she had stopped receiving benefits on October 27, 2017 when she checked her bank account, and that she immediately called IWD, who informed her it was due to overpayment. She then filed a collective appeal for reference 02, 03, 04, 05 and 06 decisions on November 2, 2017 (Department Exhibit D-1).

REASONINGS 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. 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 unemployment insurance 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).

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.* After assessing the credibility of the claimant who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge concludes the evidence presented does not support that the claimant timely notified IWD of her change of address on three occasions and put in a forwarding of address with the postal service, yet failed to receive five initial decisions and a monetary record in the mail.

It is the claimant's responsibility to notify IWD of address changes so she can timely receive notifications that could affect her eligibility of benefits. The credible evidence does not support that the claimant did so, but rather on October 27, 2017, notified IWD of her new address, which had been effective since August 1, 2017. Even if the claimant delayed notifying IWD of her address, if she did in fact put in a change of address, it is unlikely that she would not receive

any of the six separate pieces of mail from IWD, which would have been forwarded by the US postal service to her new address.

Therefore, based on the evidence presented, the administrative law judge concludes the appellant did have a reasonable opportunity to file a timely appeal and her 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).

Even if the appeal was deemed timely filed, the claimant would remain overpaid benefits.

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

7. Recovery of overpayment of benefits.

a. 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 department 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 department a sum equal to the overpayment.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$279.00 in unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated October 13, 2017, (reference 05), is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn