

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SKYLAR L WALDRON
Claimant

APPEAL 21A-UI-20937-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 06/28/20
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, Skylar L. Waldron, filed an appeal from the November 18, 2020, (reference 03) unemployment insurance decision that determined claimant had been overpaid regular unemployment insurance benefits for the two-week period ending July 11, 2020, in the gross amount of \$411.00. After due notice issued, a telephone hearing was held on November 9, 2021, and was consolidated with the hearing for appeal numbers 21A-UI-18914-AR-T and 21A-UI-18915-AR-T. The claimant participated personally, with witness Hannah Davis. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether the claimant's appeal is timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An overpayment decision was mailed to claimant on November 18, 2020. He received the decision in a timely fashion. Claimant did not initially appeal the November 18, 2020. He paid the overpayment back to Iowa Workforce Development. It was not until he received a second overpayment decision, regarding a different benefit, in August 2021, that claimant filed his appeal, which was docketed for all of the decisions associated. Claimant submitted his appeal on August 24, 2021.

The administrative record indicates that no outstanding overpayment amount of regular unemployment insurance benefits remains, after claimant paid back the overpayment.

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: “[u]nless 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(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

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).

Here, claimant received the overpayment decision prior to the deadline by which to appeal. He did not file an appeal until he received another overpayment decision for a different benefit type in August 2021. Claimant’s delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant’s appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

DECISION:

The November 18, 2020, (reference 03) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Alexis D. Rowe
Administrative Law Judge

December 10, 2021
Decision Dated and Mailed

ar/kmj