

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERI HART
Claimant

APPEAL NO. 12A-EUCU-00156-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/16/11
Claimant: Appellant (1R)**

Section 96.19(20) – Eligibility for EUCU
Section 96.6-2 – Timeliness of Appeal
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

This is a combined appeal filed by the claimant on April 23, 2012. The first appeal is from a March 16, 2012, reference 03, decision that denied EUCU benefits effective July 3, 2011, because claimant was allegedly eligible for a Nebraska claim. This decision corresponds to File No. 12A-EUCU-00155-WT. The second appeal is from a March 26, 2012, reference 04, overpayment decision which set up a \$2,985.00 overpayment for the eight weeks ending January 7, 2012, on the basis of the March 21, 2012, reference 03 decision. This decision corresponds to File No. 12A-EUCU-00156-WT. The third and final appeal is from a March 26, 2012, reference 01 decision, which set up a \$530.00 overpayment for the three weeks ending February 4, 2012. This decision corresponds to Appeal No. 12A-UI-04694-WT. After due notice was issued, a hearing was held by telephone conference call on May 17, 2012. The claimant did participate. No exhibits were admitted to the record. The complete administrative file was reviewed.

ISSUES:

The issue is whether the appeals are timely.

The second issue is whether the claimant is entitled to Emergency Unemployment Compensation benefits.

The third issue is whether the claimant has been overpaid.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Three decisions were mailed to the claimant's last-known address of record. The first was mailed on March 21, 2012, the second and third were mailed on March 26, 2012. Claimant did receive each of the decisions. Each decision contained a warning that an appeal must be postmarked or received within ten days from the date of mailing.

On April 23, 2012, the claimant appealed each of these decisions by facsimile. This is the date the appeal was received by the Appeals Bureau.

Claimant established an Iowa claim for benefits in January 2011 when she moved to Villisca, Iowa. Her most recent job prior to her Iowa original claim date was for Kelly Services performing temporary labor services. She had lived and worked in Iowa previously and apparently had an older claim. Claimant credibly testified that after filing for benefits in January 2011, she repeatedly asked IWD staff whether she should be filing a claim in Nebraska. She was repeatedly advised that she could continue to file in Iowa because there were still funds "in her account" in Iowa.

REASONING AND CONCLUSIONS OF LAW:

The first issue is the timeliness of the appeal.

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, subsection 10, 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 begin 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. 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 administrative law judge concludes that the claimant's appeals are timely based upon relevant provisions of Iowa law.

The second issue is whether claimant is eligible for EUCU benefits in Iowa. In the March 21, 2012, reference 03, decision, the Unemployment Division held that the claimant was not eligible for such benefits because "all available information indicates that you would have been monetarily eligible for regular unemployment insurance benefits on an unemployment claim in Nebraska, effective 07/03/11." Through a review of the administrative record, this appears to be correct. The claimant testified that she worked for Nebraska employers intermittently. According to Attachment A of UIPL No. 23-08, the "liable state is responsible for identifying and notifying all potentially eligible interstate claimants of their potential liability, including filing instructions."

In this instance, the agency notified the claimant by sending her a claim denial decision but has not aided the claimant in filing her Nebraska claim. Therefore, the portion of the decision indicating that the claimant is ineligible for EUCU is upheld. To date, the agency has not provided the claimant with assistance with her claim. The claim therefore, is remanded with instructions to the agency to follow UIPL No. 23-08.

The final issue is the overpayments. Both overpayments (3/26/12 Ref 04 and 3/26/12 Ref 01) appear to have been created by the 3/21/12 Ref 03 Decision denying EUCU payments. Both overpayments are legally correct, however, it is remanded for consideration of whether the overpayment should be waived pursuant to 871 IAC section 24.50(7). Both overpayments occurred due to no fault of the claimant and the claimant testified credibly to hardship. During the course of the hearing, the claimant requested consideration of waiver.

Therefore, all three decisions are upheld substantively but are remanded with the following instructions.

1. The Unemployment Division shall follow UIPL No. 23-08, including assisting the claimant in backdating and filing her claim with the State of Nebraska.
2. The Unemployment Division shall consider whether any portion of the decisions relating to EUCU should be waived based upon the standards set forth in Iowa Administrative Code 871 section 24.50(7).

DECISION:

The three decisions in question March 21, 2012, reference 03, March 26, 2012, reference 04, and March 26, 2012, reference 01, decisions are affirmed. All three fact-finding decisions remain in effect. All three claims, however, are remanded to the Unemployment Division with the foregoing instructions.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs