

IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**JARED T. VANDERLINDEN**  
**1301 W. EUCLID AVE.**  
**INDIANOLA, IA 50125-2020**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATION AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

DAN ANDERSON, IWD

**Appeal Numbers: 09-IWDUI-230**  
**OC: 01-04-09**  
**Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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December 14, 2009

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(Dated and Mailed)

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Iowa Code Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Jared T. Vanderlinden filed an appeal from a decision issued by Iowa Workforce Development on October 1, 2009, reference 03, holding he was overpaid benefits in the net amount of \$433 for the period from January 4, 2009 through April 4, 2009 based on a failure to correctly report wages earned with The Sports Page, Inc.

A telephone hearing was scheduled and held on December 14, 2009. Notice of the hearing was mailed to all parties on December 2, 2009. At the time of hearing, Claimant Vanderlinden and his wife, Kelly Vanderlinden appeared and participated. Workforce Development Investigator Mary

Piagentini participated on behalf of the department. The documents contained in the administrative files in both appeals were all admitted into the record.

#### FINDINGS OF FACT:

Jared Vanderlinden originally filed a claim for unemployment benefits effective January 4, 2009. On September 15, 2009, the department sent Vanderlinden a preliminary audit notice informing him that an audit had disclosed a possible overpayment of unemployment benefits to him in the amount of \$433 for the weeks from January 4, 2009 through April 4, 2009. The department also supplied Vanderlinden with a form filled out by his employer showing the hours he worked during the period in question and the wages paid and a crossmatch audit worksheet setting forth for each week in question the wages he reported, those reported by his employer, the amount of benefits he was paid, the amount to which he was actually entitled and the resulting overpayment. Vanderlinden was instructed that he could supply information showing the department's figures to be incorrect on or before September 25, 2009. Vanderlinden did not respond.

On October 1, 2009 the department issued its decision, reference 03, holding that Vanderlinden had received an overpayment of benefits in the net amount of \$433 and that the overpayment. The decision contained the following language:

TO APPEAL THIS DECISION:  
THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY  
10/11/09, OR RECEIVED BY IOWA WORKFORCE DEVELOPMENT APPEAL  
SECTION BY THAT DATE. IF THIS DATE FALLS ON A SATURDAY, SUNDAY,  
OR LEGAL HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT  
WORKING DAY.

Vanderlinden filed this appeal, dated November 3, 2009, and received by the Appeals Section on the same day, claiming that the total amount of overpaid benefits was incorrect.

At hearing, Kelly Vanderlinden testified that she and her husband did not receive the Preliminary Audit Notice sent to them on September 15, 2009 until approximately October 11, 2009. She stated she then attempted to telephone Investigator Piagentini and left several voice messages for her but none of her calls were returned. Ms. Vanderlinden further testified that she and her husband did not receive the department's decision issued October 1, 2009 until two day after the appeal deadline of October 11, 2009. Ms. Vanderlinden admitted that the Preliminary Audit Notice and the decision were both mailed to the correct address. She stated that after they received the department's decision they contacted Mr. Vanderlinden's former employer to determine what was going on and eventually determined they wished to appeal. The appeal was filed November 3, 2009 after she and her husband made their decision.

Investigator Piagentini testified that the Preliminary Audit Notice was mailed on September 15, 2009 and the decision was mailed on October 1, 2009. She further stated that had she received any voice mails from the Vanderlindens, she would have returned the call.

#### REASONING AND CONCLUSIONS OF LAW:

*The first issue is whether the appeal has been filed in a timely manner.*

Iowa law provides that, unless a claimant files an appeal within ten calendar days after notification of a decision was mailed to him or her, the department's decision regarding the payment of unemployment benefits shall become final.<sup>1</sup>

The record in this case shows that far more than ten calendar days elapsed between the mailing date of each decision and the date this appeal was filed. The Iowa Supreme Court has declared the requirement of filing appeals within the time allotted by statute is jurisdictional.<sup>2</sup> Failure to file a timely appeal deprives the undersigned of authority over the original decision unless there is evidence the claimant was deprived of a reasonable opportunity to file the appeal on a timely basis.<sup>3</sup>

The record does not show that Vanderlinden was deprived of a reasonable opportunity to file an appeal in a timely manner. First, it is difficult to believe that both documents mailed to the Vanderlindens' correct address were not delivered until weeks after they were sent. Further, it is difficult to believe the two documents arrived within two days of each other when they were mailed two weeks apart. Additionally, had Ms. Vanderlinden left a message for Investigator Piagentini, on October 11, 2009, as she testified, Ms. Piagentini would have returned the call.

However, even taking Ms. Vanderlinden's testimony that she and her husband received the decision on October 13, two days after the appeal deadline, they waited an additional three weeks, until November 3, 2009 to file this appeal. The fact they used that time to make up their minds whether to appeal or not does not justify their delay.

The appeal filed in this case is not timely.

#### DECISION:

The decision of Iowa Workforce Development dated October 1, 2009, reference 03, is AFFIRMED. The appeal in this case is not timely and the department's decision remains in full force and effect.

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<sup>1</sup> Iowa Code section 96.6-2.

<sup>2</sup> *Franklin v. Iowa Department of Job Service*, 277 N.W.2d 877, 881 (Iowa 1979).

<sup>3</sup> *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373, 377 (Iowa 1979), *Hendren v. Iowa Employment Security Council*, 217 N.W.2d 255 (Iowa 1974).