

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRAIG NORD
Claimant

DAVENPORT COMMUNITY SCH DIST
Employer

APPEAL 22A-UI-01280-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.3(7) – Overpayment

STATEMENT OF THE CASE:

On December 13, 2021, Craig Nord (claimant/appellant) filed an appeal from the decision dated November 17, 2021 (reference 02) that determined claimant was overpaid \$249.00 based on a prior decision which reduced the weekly benefit amount.

A telephone hearing was held on February 4, 2022. The parties were properly notified of the hearing. Claimant participated personally. Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The administrative record shows the unemployment insurance decision was mailed to claimant at the above address on November 17, 2021. That was claimant's correct address at that time. Claimant does not recall whether he received the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 27, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant went to a local IWD office to appeal the decision. The appeal form completed at that time does not indicate when it was signed or completed. Claimant believes he completed the appeal approximately a week after receiving the overpayment decision. The appeal form was faxed to the Appeals Bureau on December 13, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated November 17, 2021 (reference 02) that determined claimant was

overpaid \$249.00 based on a prior decision which reduced the weekly benefit amount is therefore final and remains in force.

Iowa Code § 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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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.”

While claimant believes he appealed within a week of receiving the decision, the administrative record strongly indicates the appeal was not taken until after the deadline to do so. The deadline to appeal was November 27, 2021, a Saturday. The appeal deadline was accordingly extended to Monday, November 29, 2021. The appeal form was not transmitted from the local IWD office to the Appeals Bureau for another two weeks, until December 13, 2021. While it is unclear exactly

when the form was completed, assuming it was completed on or before November 29, 2021, it is difficult to believe the local IVD office did not transmit it for two weeks or more after it was completed. The weight of the evidence instead supports a conclusion that the form was not completed until on or about December 13, 2021, after the deadline had passed. The administrative law judge therefore finds a good cause reason for the delay in appealing has not been established and the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated November 17, 2021 (reference 02) that determined claimant was overpaid \$249.00 based on a prior decision which reduced the weekly benefit amount is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge
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Des Moines, Iowa 50319-0209
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February 23, 2022
Decision Dated and Mailed

abd/abd