

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIAH M STORM
Claimant

APPEAL NO. 19A-UI-07756-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 11/26/17
Claimant: Appellant (1)

Iowa Code Section 95.16(4) - Overpayment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Jeremiah Storm filed an appeal from the November 15, 2018, reference 04, decision that held he was overpaid \$1,470.00 in unemployment insurance benefits for three weeks between May 20, 2018 and June 9, 2018, based on a failure to report wages earned with SprayTec Fertilizers, L.L.C. The decision also imposed a 15 percent penalty, based on the Agency representative's conclusion that Mr. Storm engaged in willful misrepresentation in connection with the failure to report wages. After due notice was issued, a hearing was held on October 24, 2019. Mr. Storm participated. Kendra Mills, Investigator 2, Investigations & Recovery, Iowa Workforce Development, participated in the appeal hearing. Exhibits A and 3 and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether Mr. Storm filed a timely appeal from the November 15, 2018, reference 04, decision or whether there is good cause to treat a late appeal from the decision as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 15, 2018, Iowa Workforce Development mailed the November 15, 2018, reference 04, decision to Jeremiah Storm at his last known address of record. The reference 04 decision was based on a November 26, 2017 original claim date. The reference 04 decision held that Mr. Storm was overpaid \$1,470.00 in unemployment insurance benefits for three weeks between May 20, 2018 and June 9, 2018, based on a failure to report wages earned with SprayTec Fertilizers, L.L.C. The reference 04 decision also imposed a 15 percent penalty, based on the Agency's representative's conclusion that Mr. Storm had engaged in willful misrepresentation in connection with the failure to report wages. The reference 04 decision set forth a November 25, 2018 deadline to appeal the decision. Mr. Storm did not file an appeal from the decision by the November 25, 2018 deadline. On October 1, 2019, Mr. Storm filed an online appeal from the November 15, 2018, reference 04, decision. The Appeals Bureau received the online appeal the same day it was transmitted and docketed an October 1, 2019 appeal.

REASONING AND CONCLUSIONS OF LAW:

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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes 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).

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 Ct. 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.*

Mr. Storm's appeal from the November 15, 2018, reference 04, decision is not a timely appeal. Mr. Storm's testimony revealed that Mr. Storm is simply an unreliable historian when it comes to his assertion that he filed an appeal at any point prior to October 1, 2019. The weight of the evidence establishes that Mr. Storm received the November 15, 2018, reference 04, decision in a timely manner and had a reasonable opportunity to file an appeal by the November 25, 2018 appeal deadline. The weight of the evidence indicates that Mr. Storm did not take steps to file an appeal by the November 25, 2018 appeal deadline. The evidence establishes that Mr. Storm had subsequent contact with the Agency regarding repayment of the overpaid benefits, but that no actual appeal was filed until October 1, 2019, more than 10 months after the appeal deadline. Mr. Storm unreasonably delayed filing the appeal. The late filing of the appeal was attributable to Mr. Storm and not attributable to Iowa Workforce Development or the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. Because the appeal was untimely, the administrative law judge has no legal authority to disturb the November 15, 2018, reference 04, decision, including no authority to waive any portion of the overpayment and no authority to waive the 15 percent penalty. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the November 15, 2018, reference 04, decision is untimely. The decision is affirmed. The decision that held the claimant was overpaid \$1,470.00 in unemployment insurance benefits for three weeks between May 20, 2018 and June 9, 2018 and that imposed an associated 15 percent penalty for misrepresentation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn