

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**DANNY L KUEHL**  
Claimant

**APPEAL NO. 22A-UI-08879-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 01/02/22  
Claimant: Appellant (2)**

Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Code § 96.5(8) – Administrative Penalty  
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud  
Iowa Admin. Code r. 871-25.9(2) – Administrative Penalty

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the February 17, 2022, reference 01, decision that denied benefits and imposed a penalty. After due notice was issued, a hearing was held on May 31, 2022. The claimant did participate and had witness Janice Tegeler. IWD did not have an investigator participate. The administrative law judge took notice of the administrative record.

**ISSUES:**

Whether the appeal is timely?

Whether IWD correctly established a claim for an overpayment of unemployment insurance benefits?

Did IWD properly impose an administrative penalty based upon the claimant's misrepresentation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on February 17, 2022. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 27, 2022. The appeal was not filed until April 5, 2022, which is after the date noticed on the disqualification decision. Claimant stated he did not receive the decision.

Claimant was found to have fraudulently underreported his earnings to receive unemployment benefits from January 18, 2018 through February 25, 2020.

On March 5, 2020, (ref 02) claimant was found to have misrepresented his income by not including income earned through a variety of sources from January 14, 2019 through February 15, 2020. On March 5, 2020 (ref 03) and January 14, 2021 (Ref 01) claimant was found to be ineligible to receive unemployment benefits as he had unpaid overpayment of unemployment

benefits and penalties. Claimant completed repayment of these fines and penalties in September 2021.

No IWD representative appeared for the hearing. The administrative law judge received no rationale as to the reason IWD imposed a penalty not only encompassing the period in 2021 after claimant completed paying his fines and 15% penalty, but also throughout the entirety of the 2022 claim year.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

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).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was potentially due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal is therefore deemed timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See,

*Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.5(8) provides:

Administrative penalty.

If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

Iowa Admin. Code r. 871-25.1 provides:

"Fraud" means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury.

Iowa Admin. Code r. 871-25.9(2) provides:

Penalties.

a. Any penalties imposed by this rule shall be in addition to those imposed by Iowa Code section 96.16.

b. The general guide for disqualifications for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the investigator because each case must be decided on its own merits. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The department shall also consider the filing of fraud charges whenever an administrative penalty is imposed against a claimant. If the same offense is repeated, loss of benefits through the end of the benefit year will result.

c. The department shall issue a determination which sets forth the specific penalty being applied.

(1) The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts.

(2) The determination shall be based on the facts obtained and shall become final within ten days after the decision was mailed to the claimant's last-known address, unless an appeal is made to the department by the filing of a notice of appeal at any office of the department of workforce development. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

In this case, the claimant applied for and received benefits between 2018 and 2020. During this time, he failed to report wages he earned with multiple companies while concurrently filing for unemployment insurance benefits and representing that he was unemployed. He did not appeal the prior decision, issued on March 5, 2020 (ref 02) assessing an overpayment due to misrepresentation, in a timely manner. That decision became final on March 15, 2020. Accordingly, there is no evidence to refute the claimant's overpayment and subsequent 15% penalty. Therefore, the administrative law judge concludes the agency properly calculated the claimant's overpayment and assessment of a 15% penalty.

IWD's investigator has discretion to determine the specific penalty imposed based upon the nature of the offense and facts. *Id.* No department representative appeared to explain rationale for the imposition of penalty. Claimant repaid a large overpayment and penalty within his 2021 claim year. As IOWD offered no explanation for its rationale behind extending the administrative penalty throughout the 2022 claim year, no penalty will be imposed for this year as claimant was penalized by not being able to secure unemployment benefits throughout his 2021 claim year – even after the entirety of the overpayment and 15% penalty was repaid. The administrative law judge concludes that no IWD investigator presented sufficient evidence to support the administrative penalty.

Therefore, based on the credible evidence presented and the lack of testimony provided by IWD, the administrative law judge concludes the imposition of the administrative penalty was not properly extended to the 2022 claim year. The claimant is eligible to receive unemployment insurance benefits from January 2, 2022, because he paid back his overpayment and 15% penalty in the 2021 claim year and no representative explained why the administrative penalty should extend to the 2022 claim year. The statute in this matter is very clear in giving an investigator latitude in determining why an administrative penalty should be added to the other overpayment and 15% penalty. As no IWD representative appeared to explain the rationale, the administrative law judge will not substitute his own reasoning for that which was not offered by IWD.

**DECISION:**

The February 17, 2022, reference 01, decision is reversed. The appeal in this case was deemed timely, and the decision of the representative is reversed. Claimant is not given an administrative penalty in this matter keeping him from receiving benefits for a period of time beyond his 2021 claim year. Claimant is eligible to receive unemployment benefits as of January 2, 2022, if he is otherwise eligible.



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Blair A. Bennett  
Administrative Law Judge

July 28, 2022  
Decision Dated and Mailed

bab/mh

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> OR by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.