

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN T GIBSON
Claimant

APPEAL NO. 14A-UI-13434-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/26/11
Claimant: Appellant (1)**

Iowa Code Section 96.3(7) – Overpayment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Steven Gibson filed an appeal from the May 30, 2012, reference 06, overpayment decision that held he had been overpaid \$1,026.87 in benefits for the eight weeks between January 22, 2012 and March 17 2012, based on an earlier decision that had disqualified him for benefits. After due notice was issued, a hearing was held on January 23, 2015. Mr. Gibson participated. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-13433-JTT. Exhibit One and Department Exhibits D-1 through D-9 were received into evidence.

ISSUE:

Whether there is good cause to treat the late appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Gibson established an original claim for benefits that was effective June 26, 2011 and received benefits in 2011. Mr. Gibson established an additional claim for benefits that was effective January 22, 2012 and received \$1,026.87 in benefits for the eight-week period of January 22, 2012 through March 17, 2012. Mr. Gibson exhausted his maximum benefit amount with the week that ended March 17, 2012.

On March 21, 2012, Iowa Workforce Development mailed a copy of the March 21, 2012, reference 04, decision to Mr. Gibson at his last-known address of record. The decision disqualified Mr. Gibson for benefits, based on an Agency conclusion that he had voluntarily quit employment on November 10, 2011 without good cause attributable to the employer. Mr. Gibson's last-known address of record on file with Iowa Workforce Development was at that time 12406 – 4th Ave, S.E., Cedar Rapids, IA 52403. The reference 04 decision contained a warning that an appeal from the decision must be postmarked by March 31, 2012 or be received by the Appeals Section by that date.

On May 30, 2012, Iowa Workforce Development mailed a copy of the May 30, 2012, reference 06, overpayment decision to Mr. Gibson's same last-known address of record. The reference 06 decision held that Mr. Gibson had been overpaid \$1,026.87 in benefits for the eight weeks between January 22, 2012 and March 17 2012, based on the earlier decision that had disqualified him for benefits. The reference 06 overpayment decision contained a warning that an appeal must be postmarked by June 9, 2012 or received by the Appeals Section by that date.

The weight of the evidence indicates that Mr. Gibson received both decisions in a timely manner, but elected not to respond to either at the time he received the decisions. Mr. Gibson did not file an appeal from either decision by the deadline set forth on the decisions.

On June 18, 2012, Iowa Workforce Development mailed the first of several overpayment statements to Mr. Gibson at the same last-known address of record. In July 2012, August 2012, July 2013 and July 2014, Iowa Workforce Development mailed additional overpayment states to Mr. Gibson at the same last-known address of record. Mr. Gibson did not respond to any of the overpayment statements.

Mr. Gibson established a new original claim for benefits that was effective November 16, 2014. Prior to establishing the new claim in November 2014, Mr. Gibson had not updated his address on record with Workforce Development from the 4th Avenue address of record. For about three years, Mr. Gibson has resided at 4900 – 16th Avenue, S.W., Apartment 10, Cedar Rapids, Iowa 52404. Prior to establishing the new claim in November 2014, Mr. Gibson had not taken appropriate steps to have his mail forwarded from the 4th Avenue address of record.

On December 15, 2014, Mr. Gibson went to the Cedar Rapids Workforce Development Center, completed an appeal form, and delivered the completed appeal form to the Center staff.

Mr. Gibson advises that he has been “a regular” at the Cedar Rapids Workforce Development Center.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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-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 871 AC 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 871 IAC 24.35(1)(b).

Mr. Gibson's appeal from both decisions was filed on December 15, 2014, when he delivered his completed appeal form to the Cedar Rapids Workforce Development Center staff.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. Indeed, it has been more than two and a half years since the appeal deadlines passed. 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 law presumes receipt of a mailed notice properly addressed and otherwise conforming to postal laws and regulations concerning postage. Eves v. Iowa Employment Security Commission, 211 N.W.2d 324, 327 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge found much of Mr. Gibson's testimony not credible. Mr. Gibson would have the administrative law judge believe that for more than two and a half years, despite Mr. Gibson being "a regular" at his local Workforce Development Center, that he was unaware of the two decisions, and unaware of the many overpayment demand letters that Workforce Development mailed to the address of record that he had provided to the Agency. The much more likely scenario is that Mr. Gibson received the decisions, knew he had already exhausted

benefits, concluded he had nothing to lose by ignoring the decision, elected not to file an appeal from the decisions at the time he received them, ignored the Agency's repeated attempts to recover the overpayment of benefits, and only became interested when he filed the 2014 claim and learned that the old overpayment would have to come out of the new benefits before he could actually receive benefits.

Even if the administrative law judge were persuaded that there was any delay in Mr. Gibson's receipt of the decisions, the weight of the evidence would still establish that it was highly unlikely that Mr. Gibson was unaware of the decisions once the overpayment demand letters started going out in 2012. No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c). Thus, even if the administrative law judge were persuaded that Mr. Gibson did not receive the decisions prior to the appeal deadlines set forth on the decisions, the administrative law judge concludes there was still unreasonable delay in filing the appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks 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).

DECISION:

The May 30, 2012, reference 06, decision is affirmed. The appeal in this case was not timely, and the decision of the claims deputy remains in effect. The claimant was overpaid \$1,026.87 in benefits for the eight weeks between January 22, 2012 and March 17 2012. The overpayment has been recovered through an off-setting of benefits in connection with a more recent claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs