

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACELYN A LAMERE
Claimant

APPEAL NO. 13A-UI-08836-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/25/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Jacelyn La Mere filed an appeal from the July 10, 2013, reference 02, decision that she was overpaid \$2,838.00 in benefits for the six weeks between December 25, 2011 and February 4, 2012. After due notice was issued, a hearing was held on September 5, 2013. Ms. La Mere participated. Exhibit A and Department Exhibits D-1 through D-4 were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 10, 2013, Iowa Workforce Development mailed a copy of the July 10, 2013, reference 02, overpayment decision to Jacelyn La Mere at her last-known address of record. Ms. La Mere received the decision within a day or two of its mailing. The decision contained a warning that an appeal from the decision must be postmarked by July 20, 2013 or received by the Appeals Section by that date. The decision also indicated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. July 20, 2013 was a Saturday and the next working day was Monday, July 22, 2013. On July 18, 2013, Ms. La Mere drafted an appeal letter. At some later point, most likely on July 30, 2013, Ms. La Mere mailed her appeal, either by attaching it to the mailbox outside her home or by taking it to a blue Postal Service drop box. The envelope in which the appeal was mailed bears a July 30, 2013, 2:00 p.m. postmark.

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, 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).

The appeal at issue was filed on July 30, 2013, the date of the postmark on the envelope in which the appeal was mailed.

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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Ms. La Mere received the decision in a timely manner, several days before the deadline for appeal. Ms. La Mere's testimony regarding the steps she took to get her appeal into the mail stream, and when she took those steps, was lacking in adequate detail and was internally contradictory. Ms. La Mere could not recall when she attached the letter to her mailbox. Ms. La Mere initially said she had attached the letter to her mailbox and that she had at some later point taken the letter to a Postal Service drop box. Ms. La Mere did not know what day she had taken the letter to the drop box. Later in the hearing, Ms. La Mere asserted that she had attached the letter to her mailbox to be picked up by the letter carrier and had not in fact needed to take the letter to the drop box. The weight of the evidence indicates that Ms. La Mere most likely mailed the appeal on July 30, 2013 and that that is why the appeal bears a July 30, 2013, afternoon postmark. The evidence establishes an untimely appeal. The evidence indicates that Workforce Development had no role in the appeal being late. The weight of evidence indicates that it was Ms. La Mere's delay in getting the appeal in the mail stream, not any act on the part of the United States Postal Service, that made her appeal late. See 871 IAC 24.35(2). The appeal was not timely filed pursuant to Iowa Code section 96.6(2). For that reason, Ms. La Mere has not preserved her right to contest the decision and the administrative law judge no longer has jurisdiction to disturb the lower decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The Agency representative's July 10, 2013, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

In the event the timeliness ruling is reversed on further appeal, there is sufficient evidence in the record to form the basis for a decision on the merits of the appeal from the overpayment decision and another hearing would be unnecessary.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs