

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WEST POMERLEE

Claimant

APPEAL NO. 20A-UI-07614-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

**OC: 03/22/20
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.16(4) and 96.5(13) – Unpaid Fraud Overpayment

STATEMENT OF THE CASE:

West Pomerlee filed a late appeal from the May 20, 2020, reference 01, decision that denied benefits in connection with the May 10, 2020 original claim, based on the Agency representative's conclusion that Mr. Pomerlee had an unpaid fraud overpayment balance. After due notice was issued, a hearing was held on August 25, 2020. Mr. Pomerlee participated. Iowa Workforce Development submitted proposed exhibits in lieu of personal participation in the appeal hearing. The claimant's appeal letter and envelope were received into evidence as Exhibit A. Department Exhibits 1 through 6 were received into evidence. The administrative law judge took official notice of the May 20, 2020, reference 01, decision and of the Agency's administrative record showing an unpaid overpayment balance of \$2,808.78.

ISSUES:

Whether the appeal was timely. 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 May 20, 2020, Iowa Workforce Development mailed the May 20, 2020, reference 01, decision to claimant West Pomerlee at his last-known address of record. The decision denied benefits in connection with the May 10, 2020 original claim, based on the Agency representative's conclusion that Mr. Pomerlee had an unpaid fraud overpayment balance. The decision stated that an appeal from the decision must be postmarked by May 30, 2020 or be received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. May 30, 2020 was a Saturday and the next working day was Monday, June 1, 2020. Mr. Pomerlee received and reviewed the decision on May 21 or 22, 2020. Mr. Pomerlee did not take steps to file an appeal by the June 1, 2020 extended deadline. On June 30, 2020, Mr. Pomerlee mailed his appeal from the May 20, 2020, reference 01, decision. The correspondence was postmarked on June 30, 2020.

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).

The evidence in the record establishes an untimely appeal from the May 20, 2020, reference 01, decision. Mr. Pomerlee received the decision on May 21 or 22, 2020, well before the June 1, 2020 extended appeal deadline. Mr. Pomerlee had a reasonable opportunity to file an appeal by the June 1, 2020 extended deadline, but unreasonably delayed filing an appeal until almost a month after the appeal deadline. The appeal was filed on June 30, 2020, as indicated by the postmark. Mr. Pomerlee testified that he had sent another appeal in April 2020. That earlier appeal, whatever it was, preceded the May 20, 2020, reference 01, and therefore could not have been an appeal from the May 20, 2020, reference 01, decision. The June 30, 2020, late filing of the appeal was attributable to Mr. Pomerlee's delayed action on the matter. The June 30, 2020 late filing of the appeal was not attributable to Iowa Workforce Development or to the United States Postal Service. Accordingly, there is not good cause under the law to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the May 20, 2020, reference 01, 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 May 20, 2020, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that denied benefits in connection with the May 10, 2020 original claim, based on the Agency representative's conclusion that the claimant had an unpaid fraud overpayment balance, remains in effect.



James E. Timberland
Administrative Law Judge

August 27, 2020
Decision Dated and Mailed

jet/scn