

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Numbers: 09-IWDUI-190
OC: 05-03-09
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

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.

**SHEILA MARSHALL
1706 WINDING HILL RD.
DAVENPORT, IA 52807-1307**

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.

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209**

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department. 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

DAN ANDERSON, IWD

(Administrative Law Judge)

September 22, 2009

(Dated and Mailed)

Iowa Code Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Sheila Marshall filed an appeal from a decision issued by Iowa Workforce Development on August 6, 2009, reference 01. That decision held Ms. Marshall had been overpaid unemployment benefits in the amount of \$2,296.70 for the seven weeks ending July 25, 2009 because another person's unemployment benefits were incorrectly deposited into her checking account.

A hearing was scheduled and held on September 21, 2009. Notice of the hearing was mailed to all parties on September 1, 2009. Ms. Marshall appeared and testified on her own behalf. She also

presented the testimony of Michelle Hoppenjan. No one appeared on behalf of Iowa Workforce Development. The documents contained in the administrative file were admitted into the record.

FINDINGS OF FACT:

Sheila Marshall originally filed a claim for unemployment benefits effective May 3, 2009. On August 8, 2009, Iowa Workforce Development issued a decision holding Ms. Marshall had received an overpayment of benefits in the amount of \$2,296.70 because another person's unemployment benefits were erroneously deposited into her checking account. The decision contained the following language:

TO APPEAL THIS DECISION:

THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 08-16-09 OR RECEIVED BY THE APPEALS SECTION BY THAT DATE. IF THIS DATE FALLS ON A SATURDAY, SUNDAY OR LEGAL HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT WORKING DAY.

(Bold and capital emphasis in original).

Ms. Marshall filed an appeal, postmarked August 21, 2009. She testified she had a lot of other things going on at the time and just did not get her appeal filed in a timely manner. Ms. Marshall testified that she gathered all of her records and took them to Workforce Development to discuss. At that time she was informed that her appeal was not timely.

Ms. Marshall does not deny she received an overpayment of benefits, but she argues that the overpayment was substantially less than \$2,296.70.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal has been filed in a timely manner.

Iowa law provides that, unless a claimant files an appeal within ten calendar days after notification of a decision was mailed to him or her, the department's decision regarding the payment of unemployment benefits shall become final.¹

The record in this case shows that more than ten calendar days elapsed between the mailing date of each decision and the date this appeal was filed. August 16, 2009, the date by which Ms. Marshall's appeal should have been postmarked was a Sunday, therefore, she had until Monday, August 17, 2009 to mail the appeal. This she failed to do.

The Iowa Supreme Court has declared the requirement of filing appeals within the time allotted by statute is jurisdictional.² Failure to file a timely appeal deprives the undersigned of authority over the original decision unless there is evidence the claimant was deprived of a reasonable opportunity to file the appeal on a timely basis.³

There is no evidence in the present case that Ms. Marshall was prevented in any way from filing a

¹ Iowa Code section 96.6-2.

² *Franklin v. Iowa Department of Job Service*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373, 377 (Iowa 1979), *Hendren v. Iowa Employment Security Council*, 217 N.W.2d 255 (Iowa 1974).

timely appeal. She testified “there was really no reason” she did not file on a timely basis except that she had “other things going on” at the time. That evidence is insufficient to find she was denied an opportunity to appeal in a timely manner.

The appeal filed in this case is not timely.

DECISION:

The decision of Iowa Workforce Development dated August 6, 2009, reference 1, is AFFIRMED. The appeal in these case is not timely and the department’s decision remains in force and effect.

kka