

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEAH M ERDMANN
Claimant

APPEAL 21A-UI-18026-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On August 12, 2021, the claimant, Leah M. Erdmann, appealed the March 23, 2021, (reference 03) decision that concluded the claimant was overpaid regular unemployment insurance benefits in the amount of \$418.00 for the four-week period ending May 16, 2020. A telephone hearing was held on October 8, 2021, pursuant to due notice and was consolidated with the hearing for appeal numbers 21A-UI-18025-AR-T and 21A-UI-18027-AR-T. The claimant participated personally, with witness Jana Erdmann, who did not testify. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An overpayment decision was mailed to claimant on March 23, 2021. She received the notice within the 10-day period for appeal. She assumed the overpayment was a "one-time correction" and paid it. She did not appeal at that time. The decision stated that an appeal was due by April 2, 2021.

It was not until claimant received a notice of overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits in August 2021 that claimant appealed. The appeal was filed on August 12, 2021.

The administrative record indicates that there is no outstanding overpayment amount of regular unemployment benefits, after claimant repaid the overpayment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Here, claimant received the overpayment decision timely. She assumed it was a “one-time correction,” paid the overpayment, and did not appeal. Claimant’s delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant’s appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

The administrative record indicates that there is no outstanding overpayment amount of regular unemployment benefits, after claimant repaid the overpayment.

DECISION:

The March 23, 2021 (reference 03) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Alexis D. Rowe
Administrative Law Judge

October 18, 2021
Decision Dated and Mailed

ar/kmj