

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE L NODLAND
Claimant

APPEAL NO. 17A-UI-04606-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/12/17
Claimant: Appellant (1)

Iowa Code Section 96.5(3)(7) - Overpayment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Renee Nodland filed a late appeal from the April 11, 2017, reference 05, decision that she was overpaid \$425.00 in benefits for the three-weeks between March 12, 2017 and April 1, 2017 due to an earlier decision that disqualified her for benefits in connection with a discharge from Casey's. After due notice was issued, a hearing was held on May 16, 2017. Ms. Nodland participated. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-04605-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 2 through 7, 9, A-F and Department Exhibits D-1 through D-3 were received into evidence.

ISSUE:

Whether there is good cause to treat Ms. Nodland's late appeal as a timely appeal.

Whether Ms. Nodland was overpaid \$425.00 in benefits for the three-weeks between March 12, 2017 and April 1, 2017 due to an earlier decision that disqualified her for benefits in connection with a discharge from Casey's.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Renee Nodland established a claim for unemployment insurance benefits that was effective March 12, 2017. Workforce Development paid out \$425.00 in benefits to Ms. Nodland for the three-week period of March 12, 2017 through April 1, 2017. Workforce Development approved, but offset/withheld an additional \$125.00 in benefits for the week that ended April 8, 2017. On April 7, 2017, Iowa Workforce Development mailed a copy of the April 7, 2017, reference 03, decision to Ms. Nodland at her last known address of record. Ms. Nodland's address of record is a United States Postal Service Post Office box in Haverhill. The reference 03 decision disqualified Ms. Nodland for benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Nodland was discharged on March 13, 2017 for excessive unexcused tardiness. The reference 03 decision contained a warning that an appeal from the decision must be postmarked by April 17, 2017 or be received by the Appeals Bureau by that date. The decision contained a telephone number Ms. Nodland could use to reach Workforce Development customer service personnel if she had any questions about the

decision.. The back side of the decision contained clear and concise instructions for filing an appeal from the decision. The weight of the evidence in the record establishes that Ms. Nodland received the April 7, 2017, reference 03, decision in a timely manner, prior to the deadline for appeal, but took no action on the matter at that time. April 7, 2013, reference 03, decision has been affirmed in Appeal Number 17A-UI-04605-JTT.

On April 11, 2017, Iowa Workforce Development mailed a copy of the April 11, 2017, reference 05, decision to Ms. Nodland at the same last known address of record in Haverhill. The reference 05 decision stated that Ms. Nodland had been overpaid \$425.00 in unemployment insurance benefits for the three weeks between March 12, 2017 and April 1, 2017, based the earlier decision that had disqualified Ms. Nodland for benefits in connection with her separation from Casey's. The reference 05 decision contained a warning that an appeal from the decision must be postmarked by April 21, 2017 or be received by the Appeals Bureau by that date. The decision contained a telephone number Ms. Nodland could use to reach Workforce Development customer service personnel if she had any questions about the decision.. The back side of the decision contained clear and concise instructions for filing an appeal from the decision. The weight of the evidence establishes that Ms. Nodland received the April 11, 2017, reference 05, decision in a timely manner, prior to the deadline for appeal, but took no action on the matter at that time.

On April 18, 2017, Workforce Development mailed an Overpayment Statement to Ms. Nodland requesting \$300.00 in repayment of benefits. Ms. Nodland further delayed action on the matter because she was busy with other matters.

On May 1, 2017, Ms. Nodland went to the Marshalltown Workforce Development Center, completed an appeal form to appeal from the reference 03 disqualification decision, and delivered the completed appeal form to the Center staff. The Appeals Bureau received the appeal by fax on May 1, 2017. In the appeal, Ms. Nodland wrote as follows:

I never received the unemployment decision. I only received the overpayment letter, enclosed. I am appealing because I feel that I was wrongfully terminated. I don't feel like I own the 300.00 overpayment of unemployment as well. Thank you.

Ms. Nodland enclosed with her appeal a copy of the Overpayment Statement that was mailed to her on April 18, 2017. Ms. Nodland also enclosed medical records from March 13 and 14, 2017. Ms. Nodland did not enclose a copy of the reference 03 disqualification decision or the reference 05 overpayment decision. The Appeals Bureau received the appeal by fax on May 1, 2017.

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).

Ms. Nodland's appeal from both decisions was filed on May 1, 2017, when she delivered the appeal to the staff at the Marshalltown Workforce Development Center.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the April 11, 2017, reference 05, decision and the May 1, 2017 appeal. 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 weight of the evidence in the record establishes that Ms. Nodland did have a reasonable opportunity to file a timely appeal. Ms. Nodland's testimony regarding whether and when she received the April 7, 2017, reference 03, decision was internally contradicting and unreliable. At one point, Ms. Nodland testified that she received the decision in the mail. At another point, she testified that she did not see the decision until staff at the Marshalltown Workforce Development Center printed it for her on May 1, 2017. Ms. Nodland provided similarly internally contradictory testimony regarding her receipt of the April 11, 2017, reference 05, decision. The administrative law judge notes that the idea of two decisions, mailed four days apart, not reaching their intended destination is a highly improbable scenario. A much more straightforward and plausible scenario would be that Ms. Nodland received both decisions in a timely manner and

ignored both until she received and reviewed the Overpayment Statement that demanded prompt repayment of benefits.

The weight of the evidence in the record establishes that Ms. Nodland's failure to file an appeal from the April 11, 2017, reference 03, decision by the April 21, 2017 appeal deadline was attributable to Ms. Nodland, not Workforce Development or the United States Postal Service. The evidence fails to establish good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the April 7, 2017, reference 03, decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In the event the ruling regarding timeliness of Ms. Nodland's appeal is reversed upon appeal to the Employment Appeal Board, the administrative law judge will also address the overpayment issue.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recovery the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits. The evidence indicates that Ms. Nodland received \$425.00 in unemployment insurance benefits for the three weeks between March 12, 2017 and April 1, 2017, but that the April 7, 2017, reference 03, decision disqualified her for those benefits. Because the April 7, 2017, reference 03, disqualified Ms. Nodland for benefits, and because that decision has been affirmed on appeal, the \$425.00 in benefits that Ms. Nodland received for the three weeks between March 12, 2017 and April 1, 2017 constitutes an overpayment of benefits. Ms. Nodland must repay the benefits. In the event the ruling on timeliness is reversed as part of a further appeal to the Employment Appeal Board, the administrative law judge notes that the \$125.00 credit referenced in the April 17, 2017 Overpayment Statement was erroneous. In the event the ruling on timeliness is reversed upon further appeal, Ms. Nodland must repay the full \$425.00 overpayment amount, not the \$300.00 erroneously noted in the April 17, 2017 Overpayment Statement.

DECISION:

The April 11, 2017, reference 05, decision is affirmed. The claimant's appeal was untimely. Even if the appeal had been timely, the claimant was overpaid \$425.00 for the three weeks between March 12, 2017 and April 1, 2017. The claimant must repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs