

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT BEAN
Claimant

APPEAL 21A-UI-20913-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/30/19
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 29, 2021, reference 05, unemployment insurance decision that concluded he was overpaid \$824.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on November 16, 2021. The hearing was held jointly with appeal 21A-UI-20909-SN-T and 21A-UI-20914-SN-T. The claimant participated. Official notice of the administrative records was taken.

ISSUES:

Whether the claimant's appeal is timely?
Whether there are reasonable ground to consider it otherwise timely?
Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

A disqualification decision was mailed to claimant's last known address of record on July 29, 2021. The claimant did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 8, 2021. (Exhibit D-1) The appeal was not filed until September 19, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

On his appeal, the claimant excused his delay in filing to disabilities that he has been diagnosed with. He also excused his filing late to receiving a new job in which required him to work 60 hours per week with approximately 20 hours of traveling time. He did not state he received any of the decisions later than anticipated.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant's appeal is not timely. He further concludes he does not have jurisdiction to evaluate the merits.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

The record in this case shows 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

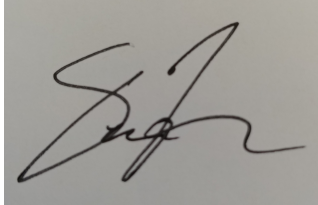
The administrative law judge finds these allegations not credible primarily because they were not listed as reasons for filing late on his appeal. He also generally finds these allegations to be so incredible as to almost be absurd. The first decision regarding eligibility had a date in 2020. It is simply absurd to believe that this was received on the same date as the other decisions. The same is true regarding the claimant's allegation that a representative of the agency told him there was not a timeline for appeals. While it is true that Iowa Workforce Development has had inexperienced staff working as advisors, it is unclear how someone untrained in the process would pronounce something so contrary to established processes. Rather the claimant believes the explanation given on the claimant's appeal for the delay in his filing regarding his disabilities and his working a full-time job.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant received the decisions at issue here. He declined to appeal within the statutory period because he was busy with his work. This reason is wholly attributable to the claimant's circumstances and does not undermine the fact that all three decisions stated the consequence for not appealing by a certain time.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The July 29, 2021, reference 05, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant was overpaid \$824.00 in regular, state unemployment insurance benefits.

A handwritten signature in black ink on a light gray background. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

December 30, 2021
Decision Dated and Mailed

smn/kmj