

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA M KUEHL
Claimant

IOWA TRUCKING COMPANY
Employer

APPEAL 22A-UI-08902-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
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 April 9, 2022, claimant Linda M. Kuehl filed an appeal from the February 10, 2022 (reference 02) unemployment insurance decision that denied benefits based on a failure to report wages. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Tuesday, May 24, 2022. Appeal numbers 22A-UI-08902-LJ-T, 22A-UI-08905-LJ-T, and 22A-UI-08907-LJ-T were heard together and created one record. The claimant, Linda M. Kuehl, participated. The employer, Iowa Trucking Company, did not appear for the hearing and did not participate. Department's Exhibits D-1, D-2, D-3, and D-4 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Two overpayment decisions were mailed to claimant's last known address of record on February 10, 2022. (Exhibits D-1 and D-2) Claimant does not dispute that she received these decisions. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 20, 2022. When claimant received the decisions, she called her accountant who advised her to wait to see if additional paperwork came in the mail.

Subsequently, a third overpayment decision was mailed to claimant's last known address of record on March 11, 2022. (Exhibit D-3) Claimant does not dispute that she received this decision. Once she received the third overpayment decision, claimant called Iowa Workforce Development ("IWD") to ask about the decisions. The worker she spoke with told claimant she "really needed to file an appeal."

Claimant did not know how to file an appeal online, so she waited for her daughter to assist her. Claimant's online appeal was received on April 9, 2022, and it was applied to all three decisions. (Exhibit D-4) Several weeks passed between the time claimant called IWD for assistance and

the time she filed her online appeal. Claimant never attempted to send an appeal through the U.S. mail.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

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:

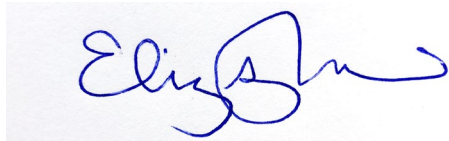
2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission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

Here, the claimant received each decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Even after talking to IWD and being specifically instructed to file an appeal, claimant waited several weeks to complete the process. Claimant had access to the U.S. mail system and could have mailed in an appeal without any assistance from her daughter, but she elected not to do that. 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 (authority) to decide the other issue in this matter.

DECISION:

The February 10, 2022 (reference 02) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

May 27, 2022
Decision Dated and Mailed

lj/lj