

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DUANE I HACKMAN
Claimant

APPEAL NO: 18A-UI-12123-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSMARK INC
Employer

OC: 01/28/18
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin Code chapter 25- Benefit payment control
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 18, 2018, (reference 06) unemployment insurance decision that established an overpayment of unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 8, 2019. The hearing was held jointly with Appeal 18A-UI-12124-JC-T. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Michelle Saddoris, Quality Control Auditor II, represented IWD. Lisa Stielow attended as an observer for IWD.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibit 1 (Appeal letter) and Department Exhibits A1-A10 were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

An initial decision (reference 06) resulting in an overpayment, was mailed to the claimant's address of record on October 18, 2018. The address provided is the claimant's residence, where he collects mail daily. The initial decision contained a warning that an appeal must be filed by October 28, 2018. Because the final day to appeal fell on Sunday, the deadline was extended to Monday, October 29, 2018. The claimant did not file his appeal on or before this date.

During the period of October 18-25, 2018, the claimant received four other initial decisions as well and was confused. On each initial decision, including the reference 06 decision at issue here, it stated:

If you have questions please call customer service at 866-239-0843.

The claimant decided to wait and see if the issues raised in the initial decisions were resolved, which delayed his appeal. The claimant did not contact IWD until December 12, 2018, after receiving a second overpayment statement. At that time, he was advised by the IWD representative to file his appeal, even though it was late. The claimant filed his appeal online on December 14, 2018 (Claimant Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. 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). 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. In this case, the claimant received the initial decision within the prescribed period to appeal. The administrative law judge recognizes the confusion that could arise with receiving five separate initial decisions over a ten day period, all within the appeal period. However, each of the decisions also directed the claimant to call IWD if he did not understand. Even if the latest of the five decision dates (October 25, 2018) during the prescribed period to appeal was used to begin calculating the ten-day period to appeal, the claimant still did not file a claim for over a month thereafter, and made no attempts to contact IWD until December 12, 2018.

Based on the evidence presented, the administrative law judge concludes the claimant's 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 Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979). Therefore, the overpayment decision of the representative remains in effect.

DECISION:

The October 18, 2018, (reference 06) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn