

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEXANDRA DABBS
Claimant

APPEAL 18A-UI-03628-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/09/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 25, 2018, (reference 09), unemployment insurance decision that found claimant overpaid unemployment insurance benefits based on being unavailable for work. After due notice was issued, a telephone conference hearing was scheduled to be held on April 12, 2018. Claimant participated. Department’s Exhibit D-1 was received.

ISSUES:

Is the appeal timely?

Was the claimant overpaid unemployment insurance benefits for the two weeks ending January 13, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began taking full-time online classes in January 2018. At that time, claimant believed she was still eligible for Department Approved Training, so she was not searching for work. On January 23, 2018, a reference 06 decision was issued finding claimant ineligible for benefits because she was in school full-time and devoting the majority of her time to her studies. The deadline to appeal the decision was February 2, 2018. On January 25, 2018, a reference 09 decision was issued finding claimant overpaid benefits because she was not available for work. The deadline to file the appeal was February 4, 2018. Claimant received the decisions sometime in February 2018. On January 31, 2018, a reference 10 decision was issued finding claimant ineligible for Department Approved Training because the classes she was taking took place or could take place outside of the hours she worked during her base period.

On February 1 and 6, 2018, claimant had fact finding interviews regarding her weekly continued claims in which she reported she was not able to or available for work. Claimant indicated during the fact finding interview on February 6, 2018, that she was in school on a full-time basis and was going to appeal the decision that found her ineligible for Department Approved

Training. The fact finder told claimant that going forward, when answering the question on whether she was able to and available for work, she should replace the word "work" with "school." Claimant did so and began marking that she was able and available on her weekly claims.

On February 6, 2018, claimant filed an appeal of the decision denying Department Approved Training. The hearing was scheduled for March 2, 2018. However, claimant did not register for the hearing and the appeal was dismissed. See 18A-UI-01689-CL-T. Claimant has not appealed that decision.

On March 19, 2018, claimant went into her local workforce office. At that time, it was explained to claimant that the decision locking her claim was the reference 06 decision that found her unavailable for work. Claimant filed an appeal of that decision and the corresponding overpayment decision the next day, on March 20, 2018.

Claimant is taking full-time online classes and is six months pregnant. She expressed she does not believe she will become employed. In approximately one month, claimant will begin taking full-time, on-campus nursing classes. At that time, claimant will reapply for Department Approved Training.

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:

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.

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. Bd. 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 unemployment insurance 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. Claimant did not file a timely appeal because she instead chose to pursue eligibility for Department Approved Training. Since claimant was asserting she could not work because of school and was not searching for work, it did not make sense for claimant to appeal the reference 06 decision. The claimant's appeal of the decision denying her Department Approved Training did not turn out favorably for her as she did not register for the hearing and a default decision was issued. Claimant did not appeal that decision. Claimant waited a few weeks, and then went into her local office. After being told the reference 06 decision was locking her claim, claimant then decided to pursue an appeal of that decision and the corresponding overpayment decision. In summary, claimant had a reasonable opportunity to appeal this decision, but made a conscious and strategic decision not to do so.

The administrative law judge concludes that failure to follow the clear written instructions 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).

DECISION:

The January 25, 2018, (reference 09) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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