

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL J WRIGHT
Claimant

APPEAL 22A-UI-03116-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (6)

Iowa Code § 96.6(2) - Timely Appeal
PL 116-136, Sec. 2104 - Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On January 13, 2022, Michael Wright, claimant/appellant, appealed the September 27, 2021, (reference 03) unemployment insurance decision that found claimant was overpaid \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the eight-week period between 03/29/2020 and ending 05/23/20 due to the 09/28/21 decision finding claimant was not eligible regular unemployment benefits during this period. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for March 2, 2022. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-03114-DH-T, 22A-UI-03115-DH-T, and 22A-UI-03116-DH-T. Claimant personally participated. The department failed to participate. Judicial notice was taken of the administrative records, including claimant's attachment to the appeal.

ISSUES:

Is the appeal timely?
Was claimant overpaid FPUC benefits?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

To be timely, claimant's appeal needed to be filed by October 7, 2021. The appeal was filed on January 13, 2022. Claimant received this decision on October 10, 2021. Claimant advised he didn't get around to filing his appeals until he finally did, on January 13, 2022.

Claimant appealed the underlying decision finding overpayment of regular unemployment benefits, with a reference number of 02, in 22A-UI-03115-DH-T, one of the consolidated cases in this hearing. That appeal decision kept the underlying decision in effect and dismissed the appeal due to claimant's appeal not being timely.

KPYX shows claimant received \$4,600.00 in FPUC benefits for an 8-week period ending 05/23/20.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not timely.

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 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).

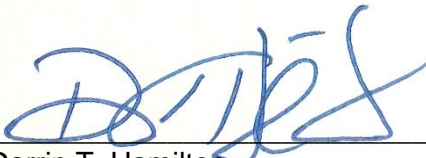
The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute,

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). The record shows that the appellant did not receive the decision within ten days of the mailing date. After claimant received the decision on October 10, 2021, he then took ninety-six days to file his appeal on January 13, 2022.

The administrative law judge concludes that claimant's failure to file a timely appeal after receiving notice of the decision 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 September 27, 2021, (reference 03) unemployment insurance decision finding claimant was overpaid \$4,600.00 in FPUC benefits which must be repaid remains in effect, as the appellant is in default and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

March 29, 2022
Decision Dated and Mailed

dh/scn