

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JOAN M PIETAN**  
Claimant

**APPEAL NO. 18A-UI-11152-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/24/17**  
**Claimant: Appellant (1)**

Iowa Code Section 96.3(7) - Overpayment  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Joan Pietan filed an appeal from the October 15, 2018, reference 06, decision that held she was overpaid \$18,200.00 in unemployment insurance benefits for 52 weeks between September 24, 2017 and September 22, 2018, based on an earlier decision that disqualified her for benefits in connection with her voluntary quit from Aable Pest Control, Inc. After due notice was issued, a hearing was held on November 30, 2018. Ms. Pietan participated. The hearing in this matter was consolidated with the hearing in Appeal Numbers 18A-UI-11150-JTT and 18A-UI-11151-JTT. Exhibits A through D and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBIN and DBRO).

**ISSUE:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Joan Pietan established an original claim for benefits, and a claim year, that was effective September 24, 2017. The claim year that started on September 24, 2017 expired on September 22, 2018. Ms. Pietan then established a new original claim, and new claim year, that was effective September 23, 2018.

On October 12, 2018, Iowa Workforce Development mailed an October 12, 2018, reference 05, decision to Ms. Pietan's address of record. The reference 05 decision was entered in connection with the September 24, 2017 original claim. The reference 05 decision held that Ms. Pietan was disqualified for benefits and the employer's account would not be charged, based on the deputy's conclusion that Ms. Pietan voluntarily quit her employment at Aable Pest Control, Inc. on September 20, 2017 without good cause attributable to the employer. The reference 05 decision arrived at Ms. Pietan's address of record in a timely manner, prior to the deadline for appeal. Ms. Pietan is in the habit of not checking her mailbox on a daily basis and the decision sat in Ms. Pietan's mailbox for days before Ms. Pietan collected it from the mailbox.

The reference 05 decision stated that an appeal from the decision must be postmarked by October 22, 2018 or be received by the Appeal Section by that date.

On October 15, 2018, Iowa Workforce Development mailed an October 15, 2018, reference 01, decision to Ms. Pietan's address of record. The reference 01 decision was entered in connection with the September 23, 2018 original claim. The reference 01 decision held that Ms. Pietan was disqualified for benefits and the employer's account would not be charged, based on the deputy's conclusion that a decision regarding Ms. Pietan's separation from Able Pest Control, Inc. was made on a prior claim and remained in effect. The decision erroneously referenced an October 11, 2018 separation date, rather than the correct separation date of September 20, 2017. The reference 01 decision arrived at Ms. Pietan's mailbox in a timely manner, prior to the deadline for appeal. The decision sat in Ms. Pietan's mailbox for days before Ms. Pietan collected the decision from her mailbox. The reference 05 decision stated that an appeal from the decision must be postmarked by October 25, 2018 or be received by the Appeal Section by that date.

Also on October 15, 2018, Iowa Workforce Development mailed an October 15, 2018, reference 06, decision to Ms. Pietan's address of record. The reference 06 decision was entered in connection with the September 24, 2017 original claim. The reference 06 decision held that Ms. Pietan was overpaid \$18,200.00 in unemployment insurance benefits for 52 weeks between September 24, 2017 and September 22, 2018, based on the earlier (October 12, 2018, reference 05) decision that disqualified her for benefits in connection with her voluntary quit from Able Pest Control, Inc. The reference 06 decision arrived at Ms. Pietan's mailbox in a timely manner, prior to the deadline for appeal. The decision sat in Ms. Pietan's mailbox for days before she collected it from the mailbox. The reference 06 decision stated that an appeal from the decision must be postmarked by October 25, 2018 or be received by the Appeal Section by that date.

Ms. Pietan did not take steps to file an appeal from any of the three above decisions by the applicable deadline set forth on the decision. Ms. Pietan did not take steps to respond to any of the decisions until November 14, 2018, when she received a telephone call from an Iowa Workforce Development collections representative about setting up a repayment plan to repay the \$18,200.00 overpayment. On November 14, 2018, Ms. Pietan went to the Waterloo Workforce Development Center and completed an appeal form regarding the October 15, 2018, reference 01, decision and the October 15, 2018, reference 06, decision. Ms. Pietan delivered the completed appeal forms to a Workforce Development representative, who faxed the appeal forms to the Appeals Bureau. The Appeals Bureau received the appeal forms on November 14, 2018. The Appeals Bureau treated the appeal form regarding the October 15, 2018, reference 01, decision as also an appeal from the October 12, 2018, reference 05, decision.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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 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. 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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 evidence in the record establishes that Ms. Pietan's November 14, 2018, appeal from the October 15, 2018, reference 06, overpayment decision was untimely. The weight of the evidence in the record establishes that Ms. Pietan received the decision in a timely manner and had a reasonable opportunity to file an appeal by the deadline date set forth on the decision. The weight of the evidence establishes that Ms. Pietan intentionally ignored all three decisions until an Iowa Workforce Development collections agent contacted her by telephone on

October 14, 2018. The late filing of the appeal was attributable to Ms. Pietan, and not attributable to Iowa Workforce Development or the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the lower decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal was untimely. The October 15, 2018, reference 06, decision remains in effect. That decision held the claimant was overpaid \$18,200.00 in unemployment insurance benefits for 52 weeks between September 24, 2017 and September 22, 2018, based on an earlier decision that disqualified her for benefits in connection with her voluntary quit from Aable Pest Control, Inc.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs