

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANNON D BRAUER
Claimant

APPEAL NO. 21A-UI-06053-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/18/19
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Public Law 116-136, Section 2107 – Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

The claimant, Shannon Brauer, filed a late appeal from the August 28, 2020 (reference 05) decision that denied Pandemic Emergency Unemployment Compensation (PEUC) benefits effective April 12, 2020, based on an Agency determination that she was monetarily eligible for regular benefits in Illinois. After due notice was issued, a hearing was held on April 10, 2021. Ms. Brauer participated. The hearing in this matter was consolidated with the hearing in Appeal Numbers 21A-UI-06054-JT-T and 21A-UI-06056-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative record: DBRO, KPYX, KCCO, WAGE-A, IBIQ, the August 28, 2020 (reference 05), the November 16, 2020 (reference 06 and reference 07) decisions, and the Illinois Department of Employment Security's website located at <https://www2.illinois.gov/ides>.

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: On August 28, 2020, Iowa Workforce Development mailed the August 28, 2020 (reference 05) decision to the claimant's Low Moor, Iowa last-known address of record. The reference 05 decision denied PEUC benefits for the period beginning April 12, 2020, based on the deputy's conclusion that the claimant was monetarily eligible for regular benefits in Illinois. The reference 05 decision stated that the decision would become final unless an appeal was postmarked by September 8, 2020 or was received by the Appeals Bureau by that date. The decision included clear and concise instructions for filing an appeal from the decision. The claimant cannot recall when she received the August 28, 2020 (reference 05) decision. The weight of the evidence indicates the reference 05 decision was delivered in a timely manner. The claimant's address of record with IWD was and is the street address where the claimant resided and continues to reside. Low Moor has a population of about 100. The United States Postal Service (USPS) does not deliver mail to Low Moor residents' homes. Instead, residents are required to use a USPS post office box at the local post office. The claimant has resided in

Low Moor for several years and is known to her local postmaster. The claimant advises that there were unspecified times during the COVID-19 pandemic when the local postmaster was absent and a substitute post master worked in that person's place. The claimant does not know whether the local post office had a list of names associated with the assigned post boxes. A reasonable person would conclude the post office would out of necessity maintain such a list and would timely distribute mail accordingly. The weight of the evidence establishes that the reference 05 decision was delivered to the claimant's post office box in a timely manner, prior to the deadline for appeal. The claimant did not file an appeal from the reference 05 decision by the September 8, 2020 appeal deadline.

On November 16, 2020, Iowa Workforce Development mailed two overpayment decisions to the claimant at the same last-known address of record. The November 16, 2020 (reference 06) held the claimant was overpaid \$2,130.00 in PEUC benefits for the six weeks between April 12, 2020 and May 23, 2020, based on the August 28, 2020 decision that denied PEUC benefits effective April 12, 2020. The November 16, 2020 (reference 07) decision held the claimant was overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) for the six weeks between April 12, 2020 and May 23, 2020, based on the August 28, 2020 decision that denied PEUC benefits effective April 12, 2020. Each decision included clear and concise instructions for filing an appeal from the decision. Each decision stated that the decision would become final unless an appeal was postmarked by November 26, 2020 or was received by the Appeals Section by that day. Each decision stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. November 26, 2020 was the Thanksgiving holiday. State offices remained closed that day and through Sunday November 29, 2020. The next working day was Monday, November 30, 2020. The weight of the evidence establishes that the both decisions were delivered to the claimant's post office box in a timely manner, prior to the November 30, 2020 extended deadline for appeal. The claimant did not take steps to file an appeal by November 30, 2020 appeal deadline.

On December 8, 2020, the claimant sent an email message to the Iowa Workforce Development via the uicclaimshelp@iwd.iowa.gov email address. The claimant acknowledged receipt of the two overpayment decisions and the overpayment amounts referenced therein. The claimant requested that IWD contact her to discuss the matters further. IWD standard practice is to promptly respond to inquiries directed to that email address and would have promptly responded to the claimant's inquiry.

During subsequent email contact on January 16, 2021, an Iowa Workforce Development Benefits Bureau representative specifically advised the claimant to file an appeal from the decisions.

On February 10, 2021, the claimant completed and transmitted an online appeal. The claimant referenced the August 28 2020 decision date applicable to the reference 05 and referenced the reference 07 decision. The claimant stated in the February 10, 2021 appeal that she had received a decision on approximately November 30, 2020. The Appeals Bureau received the decision on February 10, 2020 and treated it as a late appeal from all three adverse decisions.

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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The evidence in the record establishes an untimely appeal. The weight of the evidence establishes that the claimant received each of the decisions in question in a timely manner, had a reasonable opportunity to file an appeal by the applicable appeal deadline, but unreasonably delayed filing an appeal until February 10, 2021. The claimant, a paralegal, repeatedly provided testimony concerning the timeliness issues that a reasonable person would conclude was less than candid. The weight of the evidence fails to establish any delay of the appeal that would be attributable to Iowa Workforce Development or to the United States Postal Service. Indeed, even after an IWD representative told the claimant on January 16, 2021 that she needed to file an appeal, which was information the claimant received in the decisions, the claimant further delayed filing an appeal another 25 days to February 10, 2021. 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 untimely, the administrative law judge lacks jurisdiction to disturb the decision appealed in this matter. 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 is untimely. The August 28, 2020 (reference 05) decision that denied Pandemic Emergency Unemployment Compensation (PEUC) benefits effective April 12, 2020, based on an Agency determination that the claimant was monetarily eligible for regular benefits in Illinois, remains in effect.



James E. Timberland
Administrative Law Judge

April 15, 2021
Decision Dated and Mailed

jet/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Additionally, instructions for requesting a waiver of a PEUC or FPUC overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.