

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 09-IWDUI-178
OC: 03/08/09
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

TRICIA A. MONTGOMERY
2819 MEADOWWOOD DRIVE
DUBUQUE, IA 52001-0935

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

DAN ANDERSON, IWD

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

Margaret LaMarche

(Administrative Law Judge)

SEPTEMBER 9, 2009

(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation
Iowa Code section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Tricia A. Montgomery filed an appeal from a decision that was issued by Iowa Workforce Development on July 13, 2009. The decision held that Ms. Montgomery had been overpaid unemployment insurance benefits in the amount of \$386.00 for the week of April 5, 2009 through April 11, 2009. The decision further held that the overpayment was the result of misrepresentation for failure to report wages.

A telephone hearing was scheduled and held on September 8, 2009. The notice specifically instructed the parties to call in using a conference code at the time scheduled for hearing. No one called in on behalf of Iowa Workforce Development. Ms. Montgomery did call in and was self-represented. The documents contained in the administrative file were admitted into the record.

FINDINGS OF FACT:

Tricia A. Montgomery originally filed a claim for unemployment benefits effective March 8, 2009. On July 13, 2009, the department issued its decision, reference 01, holding that Ms. Montgomery had received an overpayment of benefits in the amount of \$386.00 and that the overpayment was due to her misrepresentation for failure to report wages. The decision date, which appears to have been July 9, 2009, was crossed out and the date July 13, 2009 was typed on the form. July 13, 2009 is the presumed mailing date of the decision. The decision states that Ms. Montgomery failed to report wages earned between April 5 and April 11, 2009. The decision specifically stated that, should she wish to contest the decision, Ms. Montgomery was required to file an appeal postmarked or received by the Appeal Section of the department by July 19, 2009. July 19, 2009 is less than 10 days following the July 13, 2009 issuance date of the decision.

Ms. Montgomery filed this appeal, dated and postmarked July 24, 2009, claiming that she was not overpaid benefits because she did not begin working until April 13, 2009 or later. She further stated that she did not receive the decision until July 22, 2009 when she returned from vacation. She called and left a message at the Dubuque office on July 23, 2009 but did not file a written appeal until July 24, 2009.

At hearing, Ms. Montgomery explained that she was unemployed from March 15, 2009 through April 5, 2009. She admitted that she started working on April 6, 2009 but denied that she filed a claim for unemployment benefits for that week. She believed that she received unemployment compensation for only the three weeks that she was not employed.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal has been filed in a timely manner.

Iowa law provides that, unless a claimant files an appeal within ten calendar days after notification of a decision was mailed to him or her, the department's decision regarding the payment of unemployment benefits shall become final.¹

The ten day appeal time runs from the date the decision was mailed, not from the date of receipt. The record in this case shows that eleven calendar days elapsed between the mailing date of the decision (July 13, 2009) and the date this appeal was filed (July 24, 2009). The Iowa Supreme Court has declared the requirement of filing appeals within the time allotted by statute is jurisdictional.² Failure to file a timely appeal deprives the undersigned of authority over the original decision unless there is evidence the claimant was deprived of a reasonable opportunity to file the appeal on a timely basis.³

There is no evidence in the present case that Ms. Montgomery was prevented in any way from filing a timely appeal. She could have mailed her appeal on the day she received the notification or on the following day and it would have been timely.

The appeal filed in this case is not timely. Ms. Montgomery is therefore foreclosed from challenging the decision. Since Ms. Montgomery's appeal was not filed timely, I do not have jurisdiction to consider whether the Department was correct in assessing an overpayment and in determining that the overpayment was due to misrepresentation.

DECISION:

The decision of Iowa Workforce Development dated July 13, 2009, reference 1, is **AFFIRMED**. The appeal in this case is not timely and the decision remains in force and effect.

¹ Iowa Code section 96.6-2.

² *Franklin v. Iowa Department of Job Service*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373, 377 (Iowa 1979), *Hendren v. Iowa Employment Security Council*, 217 N.W.2d 255 (Iowa 1974).