

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUSTIN M FALLINE**  
Claimant

**APPEAL NO. 17A-UI-10969-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 01/01/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Justin Falling filed a late appeal from the September 5, 2017, reference 03, decision that held he was overpaid \$2,836.00 in benefits for seven weeks between March 12, 2017 and May 13, 2017, based on a decision that disqualified him for benefits in connection with his voluntary quit from Menard, Inc. After due notice was issued, a hearing was held on November 14, 2017. Mr. Falline participated. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-10968-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. Exhibit A and Department Exhibits D-1 through D-4 were received into evidence. At the claimant's request, the administrative law judge reviewed agency's records for correspondence that provided a blanket allowance of benefits and found no such correspondence.

**ISSUE:**

Whether there is good cause to treat Mr. Falline's late appeal from the September 5, 2017, reference 03, overpayment decision as at timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Justin Falline established an original claim for unemployment insurance benefits that was effective January 1, 2017. Mr. Falline established the original claim in the context of a layoff from his full-time employment at Polaris Industries, Inc. Mr. Falline was at the time also employed on a part-time basis at Menards. Mr. Falline claimed partial benefits for the week that ended January 7, 2017 and then was recalled to his full-time employment. Mr. Falline subsequently reactivated his claim for benefits effective February 26, 2017. Mr. Falline received \$248.00 in partial benefits for the week that ended March 4, 2017. On March 7, 2017, Mr. Falline voluntarily quit the employment at Menard, Inc. Mr. Falline subsequently received an additional \$2,836.00 in benefits for seven weeks between March 12, 2017 and May 13, 2017.

On July 24, 2017, a Workforce Development claims deputy entered a reference 01 decision, that allowed benefits to Mr. Falline effective January 1, 2017, provided he met all other eligibility

requirements, based on a conclusion that Mr. Falline was able to work and available for work. The decision relieved Menard, Inc. of liability for benefits, based on a conclusion that Mr. Falline was still employed the same conditions and wages. The specific, pertinent language of the decision included the following:

**DECISION:**

YOU ARE ELIGIBLE TO RECEIVE UNEMPLOYMENT INSURANCE BENEFITS BEGINNING 01/01/17, AS LONG AS YOU MEET ALL OTHER ELIGIBILITY REQUIREMENTS.

**EXPLANATION OF DECISION:**

OUR RECORDS INDICATE YOU ARE CURRENTLY EMPLOYED WITH THE SAME EMPLOYER, IN THE SAME WAY, AS BEFORE YOU FILED YOUR CURRENT CLAIM. YOU ARE TO REPORT WAGES DURING ANY WEEKS CLAIMED AND YOU MUST CONTINUE TO MEET ALL THE OTHER ELIGIBILITY REQUIREMENTS. YOU ARE TO REPORT GROSS EARNINGS DURING EACH WEEK CLAIMED.

**EMPLOYER INFORMATION:**

NO CHARGES WILL BE MADE AGAINST YOUR ACCOUNT FOR BENEFITS PAID. IF THE CLAIMANT DISCONTINUES WORK, THIS SHOULD BE REPORTED IMMEDIATELY TO IOWA WORKFORCE DEVELOPMENT. AT THAT TIME THE SEPARATION ISSUE WILL BE INVESTIGATED SO THAT FUTURE PAYMENTS ARE CORRECTLY PAID AND CHARGED.

**LEGAL REFERENCE:**

THIS ALLOWANCE WAS MADE UNDER LAW SECTION 96.4-3 AND 97.72A(2).

Of note, the decision provided a conditional allowance of benefits, not a blanket allowance. The decision conditioned the allowance of benefits on Mr. Falline continuing to meet all other eligibility requirements. In addition, the decision specifically indicated that it pertained to a conditional allowance of benefits so long as Mr. Falline remained in the Menards employment under the same conditions. The decision specifically indicated that a separation from the employment would result in a subsequent adjudication of Mr. Falline's eligibility for benefits and the employer's liability for benefits based on the separation.

Though the July 24, 2017, reference 01, decision was entered at a time when Mr. Falline had already separated from the Menards employment months earlier, the decision did not address the separation. Nor was a simultaneous decision entered regarding the separation.

The employer wished to be heard on the issues related to the separation from the employment and filed a timely appeal from the July 24, 2017, reference 01, decision. An appeal hearing was set for August 16, 2017. At the time set for the appeal hearing, the employer withdrew its appeal from July 24, 2017, reference 01, decision with the understanding that the issues related to Mr. Falline's March 7, 2017 separation from the employment would be remanded to the Benefits Bureau for adjudication.

On August 30, 2017, a Workforce Development claims deputy held a fact-finding interview to address Mr. Falline's separation from the Menards employment. Mr. Falline had notice of the fact-finding interview, but did not participate because the time set for the fact-finding interview conflicted with his work hours at Polaris Industries.

On August 31, 2017, Iowa Workforce Development mailed a copy of the August 31, 2017, reference 02, decision to Mr. Falline at his last-known address of record. The decision disqualified Mr. Falline for benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Falline voluntarily quit his employment with Menard, Inc. on March 7, 2017 without good cause attributable to that employer. The decision stated that that an appeal from the decision must be postmarked by September 10, 2017 or be received by the Appeals Section by that date. Mr. Falline received the decision in a timely manner, but did not take steps to file an appeal by the appeal deadline.

On September 5, 2017, Iowa Workforce Development mailed a copy of the September 5, 2017, reference 03, decision to Mr. Falline at his last-known address of record. The decision held that Mr. Falline was overpaid \$2,836.00 for seven weeks between March 12, 2017 and May 13, 2017, based on the earlier decision that had disqualified Mr. Falline for benefits in connection with his voluntary quit from Menard, Inc. The decision stated that that an appeal from the decision must be postmarked by September 15, 2017 or be received by the Appeals Section by that date. Mr. Falline received the decision in a timely manner, but did not take steps to file an appeal by the appeal deadline.

Mr. Falline subsequently established an additional claim for unemployment insurance benefits that was effective October 15, 2017. Mr. Falline established the additional claim for benefits in the context of another layoff from his full-time employment at Polaris Industries, Inc.

On or about October 27, 2017, Mr. Falline contacted Iowa Workforce Development regarding the status of the additional claim for benefits and learned at that time that he could not receive additional benefits due to the August 31, 2017, reference 02, disqualification decision and the September 5, 2017, reference 03, overpayment decision. On October 27, 2017, Mr. Falline filed an online appeal from the September 5, 2017, reference 03, overpayment decision. Mr. Falline indicated in the online appeal that he had received the reference 03 decision on September 13, 2017. The Appeals Bureau received the online appeal on October 27, 2017 and treated it as a late appeal also from the August 31, 2017, reference 02, disqualification decision.

Mr. Falline made material statements in his online appeal. Mr. Falline wrote as follows:

Reason for Appeal:

Iowa Unemployment Insurance took from the wrong employer for unemployment insurance. I have been employed by Polaris Industries from June 2014 to present. Menards was a second job that was only part-time. I was laid off from Polaris temporarily when requesting unemployment during this time (3/12/17 to 5/13/17). At that time I no longer worked at Menards, but was still working full-time at Polaris except for several weeks that I was involuntarily laid off.

Reason for Late Appeal (if applicable):

I received notice that I did not owe anything to anyone about this appeal so I did not worry about it anymore. Now I have notice that I owe over \$2,000 because Iowa Workforce took money from my part-time employer when they should have been taking it from my full-time employer. I would like proof that I owe this money when I did everything legally and correctly.

At Mr. Falline's request, the administrative law judge has reviewed the agency's records in search of correspondence that would have conveyed to Mr. Falline that he "did not owe anything to anyone" in connection with his claim for benefits. There is not such correspondence in the agency's records that provides blanket relief to Mr. Falline in connection with the claim.

## 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 871 AC 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 871 IAC 24.35(1)(b).

Mr. Falline's late appeal from the August 31, 2017, reference 02, disqualification decision and the September 5, 2017, reference 03, overpayment decision were filed on October 27, 2017, when Mr. Falline submitted and Workforce Development received the online appeal.

The evidence in the record establishes that substantially more than ten calendar days elapsed between the mailing date of each decision and the date the 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 Mr. Falline received the September 5, 2017, reference 03, overpayment decision in a timely manner and did have a reasonable opportunity to file a timely appeal by the September 15, 2017 appeal deadline. The weight of the evidence establishes that Mr. Falline chose not to take action on matter until he established the additional claim for benefits that was effective October 15, 2017 and learned the decision prevented him from receiving additional benefits. Mr. Falline's October 27, 2017 appeal lays out his erroneous belief, apparently based on the July 24, 2017, reference 01, decision, that he was eligible for benefits *no matter what*. But that decision clearly did not provide blanket approval. Unfortunately, Mr. Falline elected at the appeal hearing to concoct a completely fallacious story about a Workforce Development representative telling him everything was resolved and that he need not worry about the disqualification decision or the overpayment decision.

The administrative law judge concludes that Mr. Falline's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Mr. Falline's inaction on the matter and not due to Workforce error or misinformation or delay or other action of the United States Postal Service. 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 from September 5, 2017, reference 03, decision was untimely. The decision that the claimant was overpaid \$2,836.00 in benefits for seven weeks between March 12, 2017 and May 13, 2017, based on a decision that disqualified him for benefits in connection with his voluntary quit from Menard, Inc., remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs