

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TREVAR N RIPPEY
Claimant

APPEAL 19A-UI-01209-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/06/16
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 15, 2016 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid unemployment insurance benefits of \$717.00 because claimant incorrectly reported, or failed to report, earnings from Kaldenberg Landscaping between April 24, 2016 and May 14, 2016. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on February 26, 2019. The claimant, Trevar N. Rippey, participated personally. Kevan Irvine participated on behalf of IWD. IWD Exhibits 1 through 8 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A decision dated June 15, 2016 (reference 05) was mailed to the claimant's last known address of record on E Rose Ave in Des Moines, Iowa that the claimant had provided to IWD. However, claimant moved from the address in early 2016. Claimant failed to update his address with the United States Postal Service and failed to update his address with IWD at the time that he moved. The decision stated that the claimant was overpaid benefits of \$717.00 due to misrepresentation and found a 15% penalty should be added to the overpayment. See Exhibit 4. The decision listed an appeal deadline of June 25, 2016. See Exhibit 4. Claimant does not remember receiving the decision in the mail. Claimant did not file an appeal of the decision until February 12, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows that the claimant failed to file a timely appeal.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

(emphasis added).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

The claimant credibly testified that he failed to contact the United States Postal Service and IWD when he moved from his address in early 2016. Because he did not change his address with the United States Postal Service or IWD, he did not receive the decision dated June 15, 2016 in the mail. As such, the delay in claimant receiving the decision and then filing an appeal was due to his own actions, not any error by the United States Postal Service or IWD. Claimant has not shown any good cause for failure to comply with the jurisdictional time limit to file an appeal. Iowa Admin. Code r. 871-24.35(2). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the issue on appeal. Iowa Code § 96.6(2).

DECISION:

The claimant failed to file a timely appeal. The June 15, 2016 (reference 05) unemployment insurance decision is affirmed. The claimant is overpaid benefits. IWD correctly imposed the 15% administrative penalty due to the claimant's misrepresentation.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs