

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**GWENDOLYN MIMS**  
Claimant

**APPEAL NO. 21A-UI-18964-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.3(7) – Overpayment, Lost Wages Assistance Payments

**STATEMENT OF THE CASE:**

The claimant, Gwendolyn Mims, filed a late appeal from the August 3, 2021, reference 04, decision that held she was overpaid \$900.00 in Lost Wages Assistance Payments (LWAP) for three weeks ending August 15, 2020, based on the reference 01 decision that that disqualified her for benefits in connection with a determination that she was not able and/or not available for work. After due notice was issued, a hearing was held on October 20, 2021. The claimant participated. There were three matters set for a consolidated hearing: 21A-UI-18962-JT-T, 21A-UI-18963-JT-T, and 21A-UI-18964-JT-T. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the Agency’s administrative record or benefits disbursed to the claimant (DBRO and KPYX), as well as the reference 01 decision, the administrative law judge decision in Appeal Number 20A-UI-10494-S1-T, NMRO, and KLOG.

**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: The claimant, Gwendolyn Mims, established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$235.00. The claimant received \$4,370.00 in regular benefits for the 20 weeks between March 29, 2020 and August 15, 2020. The claimant received \$10,200.00 in Federal Pandemic Unemployment Compensation (FPUC) for the 17 weeks between March 29, 2020 and July 25, 2020. The claimant received \$900.00 in Lost Wages Assistance Payments (LWAP) for three weeks between July 26, 2020 and August 15, 2020.

On August 19, 2020, Iowa Workforce Development Benefits Bureau entered a reference 01 decision that denied benefits effective May 17, 2020, based on the deputy’s conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was

not available for work. The reference 01 decision prompted the overpayment decision from which the claimant appeals in the present matter.

The claimant filed a timely appeal from the reference 01 decision. An appeal hearing was set for October 15, 2020 in Appeal Number 20A-UI-10494-S1-T. The claimant did not appear for the hearing. The administrative law judge entered a default decision that dismissed the claimant's appeal and that left the reference 01 decision in place. The claimant did not appeal the administrative law judge's decision.

On August 3, 2021, Iowa Workforce Development mailed three overpayment decisions to the claimant's Iowa City last-known address of record. The reference 02 decision held the claimant was overpaid \$4,370.00 in regular benefits for 20 weeks between March 29, 2020 and August 15, 2020, based on the August 2020 decision that denied benefits. The reference 03 decision held the claimant was overpaid \$10,200.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for 17 weeks ending July 25, 2020, due to the reference 01 decision. The reference 04 decision held the claimant was overpaid \$900.00 in Lost Wages Assistance Payments (LWAP) benefits for three weeks ending August 15, 2020, based on the reference 01 decision. All three overpayment decision stated the decision would become final unless an appeal was postmarked by August 13, 2021 or was received by the Appeals Section by that date. All three overpayment decisions provided clear and concise instructions for filing an appeal online, by fax, and by mail. The claimant did not file an appeal from any of the three overpayment decisions by the August 13, 2021 deadline.

The claimant's address of record is her mother's residence on Beach View Drive in Iowa City. The claimant provided that address to Iowa Workforce Development at the time she established her claim for benefits. The claimant did not provide Iowa Workforce Development with an updated address until she provided the administrative law judge with a different Iowa City address at the time of the October 20, 2021 appeal hearing. The claimant did not contact the United States Postal Service to request to have her mail forwarded from the Beach View Drive address. The claimant has a key to her mother's locked mailbox. The claimant's mother leaves the claimant's mail in the locked mailbox and the claimant collects that mail at her leisure. The claimant lives in the same neighborhood as her mother. The claimant collects the mail no more frequently than once a week.

The weight of the evidence indicates that all three overpayment decisions were delivered to the address of record in a timely manner, prior to the August 13, 2021 appeal deadline. The decision were in the claimant's mother's mailbox at least a week before the claimant collected them from the mailbox. The claimant does not know what day she collected them. When the claimant reviewed the overpayment decisions, she observed that the August 13, 2021 appeal deadline had already passed. The claimant decided to set the decisions aside and attend to them at her leisure. The claimant estimates she had the decisions for a week before she took steps to file an appeal.

On August 25, 2021, the claimant went to the Iowa City IowaWORKS Center, partially completed an appeal form for each appeal, and delivered the appeal forms and a copy of the three overpayment decisions to the IowaWORKS staff. The IowaWORKS staff faxed the three appeals to the Appeals on August 25, 2021. The Appeals Bureau received all three faxed appeals on August 25, 2021.

**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 weight of the evidence in the record establishes an untimely appeal. The weight of the evidence indicates that all three of August 3, 2021 overpayment decisions were delivered to the address of record in a timely manner, prior to the August 13, 2021 deadline for appeal. The claimant had a reasonable opportunity to file a timely appeal from each of the overpayment decisions. The claimant unreasonably delayed collecting the mail from the mailbox for an extended period and did not collect the overpayment decisions until after the August 13, 2020 deadline for appeal has passed. The claimant then engaged in further unreasonable delay before she finally filed an appeal from each of the three overpayment decisions on August 25, 2021. The delay in filing the appeal was attributable to the claimant and was not attributable to Iowa Workforce Development or to the United States Postal System. There is not good cause to treat the 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 from which the claimant appeals. 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 the August 3, 2021, reference 04, decision is untimely. The August 3, 2021, reference 04, decision that held she was overpaid \$900.00 in Lost Wages Assistance Payments (LWAP) for three weeks ending August 15, 2020, based on the reference 01 decision that disqualified her for benefits in connection with a determination that she was not able and/or not available for work, remains in effect.



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James E. Timberland  
Administrative Law Judge

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October 29, 2021  
Decision Dated and Mailed

jet/kmj