

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRET S SACORA**

Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL NO. 07A-UI-00148-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/30/05 R: 03  
Claimant: Appellant (1)**

Section 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Bret Sacora filed an appeal from the May 24, 2005, the reference 07, decision that he was overpaid benefits of \$1,240.00. After due notice was issued, a hearing was held by telephone conference call on January 23, 2007. Mr. Sacora participated. The hearing was consolidated with the hearing in Appeal Number 07A-UI-00147-JTT. The administrative law judge took official notice of the Agency's administrative file and received Department Exhibits D-1, D-2, and D-3 into evidence.

**ISSUES:**

Whether the claimant's appeal was timely.

Whether good cause exists to deem the claimant's appeal timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 24, 2005, the reference 07, overpayment decision was mailed to Mr. Sacora's last address of record on May 24, 2005. This decision contained an appeal deadline of June 3, 2005. Mr. Sacora indicates that he did not receive the decision but was contacted by the Agency a month or two later with regard to the overpayment. However, the greater weight of the evidence indicates that Mr. Sacora did receive this decision in a timely fashion, prior to the deadline for appeal. Mr. Sacora did not take any steps toward appealing the overpayment decision in response to the contact from the Agency. The Agency would have mailed a monthly overpayment statement to Mr. Sacora for at least six months.

Mr. Sacora took no additional steps to address the overpayment decision until he contacted the Agency in December 2006 to establish a new claim for benefits that was effective December 17, 2006. At that time, Mr. Sacora learned that the overpayment remained in effect. Mr. Sacora's appeal was not filed until December 28, 2006, when Mr. Sacora completed an appeal form and delivered it to the Cedar Rapids Workforce Development Center. The appeal was forwarded to the Appeals Section by mail and was postmarked on December 28, 2006.

Mr. Sacora has requalified for benefits by earning 10 times his weekly benefit amount since separating from M & S Construction, but has not reimbursed the Agency for the overpayment of benefits.

## **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, subsection 10, 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). No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. In addition, the evidence shows that the claimant unreasonably delayed filing his appeal of the May 24, 2005, the reference 07, decision for 19 months.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The Agency representative's May 24, 2005, the reference 07, overpayment decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css