

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ALLISON C SMITH**  
Claimant

**APPEAL NO. 20A-UI-15081-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

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

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Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the October 23, 2020, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on January 21, 2021. The claimant did participate. Employer failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether the appeal is timely?  
Whether claimant is overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on October 23, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 2, 2020. The appeal was not filed until November 6, 2020, which is after the date noticed on the disqualification decision. Claimant stated that she believed her boyfriend misplaced the document when it was delivered.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The ten calendar days for appeal begin running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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.

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 pursuant to Iowa Admin. Code r. 871-24.35(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).

Whereas this decision affirms that claimant has been overpaid state unemployment benefits in this matter, claimant has subsequently been granted PUA benefits which may cover any overpayments the claimant is deemed to have received. A November 6, 2020 decision granted claimant benefits as of March 22, 2020. These PUA benefits may cover the overpayment of state and FPUC benefits received by claimant. This matter is remanded to the benefits bureau for a recalculation of claimant's overpayments given her award of PUA benefits.

**DECISION:**

The October 23, 2020, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

This matter is remanded to the benefits bureau for a recalculation of the state overpayment of benefits given claimant was awarded PUA benefits in this matter for the period she is deemed to have been overpaid state and FPUC benefits.



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Blair A. Bennett  
Administrative Law Judge

February 8, 2021  
Decision Dated and Mailed

bab/mh