

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ALISHA H PRUITT**  
Claimant

**APPEAL 19A-UI-01973-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/01/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment  
Iowa Code § 96.16(4) – Offenses and Misrepresentation

**STATEMENT OF THE CASE:**

The claimant/appellant, Alisha H. Pruitt, filed an appeal from the December 14, 2018 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was ineligible for unemployment insurance benefits due to an outstanding fraud overpayment balance.

The parties were properly notified of the hearing. A telephone hearing was held on March 21, 2019. The hearing was held jointly with Appeal 19A-UI-01972-JC-T. The claimant, Alisha H. Pruitt, participated personally. Wayne Lones, boyfriend of claimant, testified. Kevan Irvine, participated on behalf of IWD. IWD Exhibits 1-8 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records including KLOG. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a claim with an effective date of June 8, 2014. The claimant has moved several times since 2014. On file with IWD, the claimant provided the following addresses (all in Mason City, Iowa):

659 12th Street Northeast  
702 North Delaware  
1012 North Ohio Avenue  
1109 North Ohio Avenue

These were all valid addresses for the claimant for the period of 2014-2017. The claimant could not remember the exact dates she lived at each residence.

The claimant denied receipt of an initial decision dated May 8, 2015 which established an overpayment due to fraud or misrepresentation (Department Exhibit 4-1), the May 16, 2015 overpayment statement, (Department Exhibit 8-1), the July 16, 2015 overpayment statement (Department Exhibit 8-2), the February 16, 2016 overpayment statement (Department Exhibit 8-3), the April 16, 2016 overpayment statement (Department Exhibit 8-4), or June 1, 2016 overpayment statement (Department Exhibit 8-5). The claimant further denied contact with Investigator Jane Connor in 2016 requesting the overpayment agreement be sent to her (KLOG). The claimant also denied receipt of the December 14, 2018 initial decision, which was mailed to her valid mailing address.

The claimant then established a claim for benefits effective April 1, 2018 and an additional claim effective December 9, 2018. The claimant acknowledged she learned she had an overpayment of unemployment insurance benefits in January 2019, (due to a letter she could not locate for the hearing) but denied receipt of the December 14, 2018 initial decision (Department Exhibit D-1). The December 14, 2018 initial decision stated the claimant had an outstanding overpayment balance due to fraud or misrepresentation. It also contained a warning that an appeal must be filed by December 24, 2018. The claimant delayed filing an appeal to either the December 14, 2018 (reference 03) decision (Department Exhibit 1-1) or the May 8, 2015 (reference 06) initial decisions until March 6, 2019 (Department Exhibit 3-1). The claimant attributed the delay due to being busy. The claimant stated she filed the appeal on March 6, 2019 after learning her taxes may be impacted by an outstanding overpayment (Department Exhibit 3-1).

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

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

Filing – determination – appeal.

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.

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.

The ten calendar days for appeal begins 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).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes the claimant's delay in filing an appeal 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 recognizes the period of 2014-2017 involved several address changes for the claimant but is persuaded that more likely than not, she received at least one initial decision or overpayment statement, as all were mailed to valid addresses. This is further supported by the administrative records which reflect the claimant requested an overpayment statement be resent to her in 2016. Even if the claimant did not receive any of the documents mailed to her from IWD between May 2015-2017 or the December 14, 2018 initial decision at issue here, the claimant acknowledged she learned of the overpayment (which is referenced in the appealed initial decision) in January 2019 after establishing her additional claim effective December 9, 2018. At that point, the claimant had notice of an outstanding overpayment balance. Even if the claimant discovered the overpayment on January 31, 2019, for purposes of

calculating a ten-day period to appeal, the final day would have been February 10, 2019. Because February 10, 2019 was a Sunday, the final day would have been extended to February 11, 2019.

No submission shall be considered timely if the delay in filing was unreasonable, based on the circumstances in the case. 871 IAC 24.35(2)(c). The claimant did not file her appeal until March 6, 2019 (Department Exhibit 3-1). The administrative law judge recognizes the claimant may have had late notice of the initial decision referencing the overpayment in January 2019, but that her appeal was unreasonably delayed when filed on March 6, 2019. Based on the evidence presented, the administrative law judge concludes that the delay in filing the appeal was not reasonable and, therefore, that the appeal should not be considered timely.

The administrative law judge further concludes that because the appeal was not timely filed pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979). The claimant is ineligible for benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, interest, and lien fees, provided claimant is otherwise eligible.

**DECISION:**

The December 14, 2018, (reference 03) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is ineligible for benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, interest, and lien fees, provided claimant is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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