

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD K MARTIN
Claimant

APPEAL 19A-UI-00678-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 10/07/18
Claimant: Appellant (1R)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Richard K. Martin (claimant) filed an appeal from the December 20, 2018, reference 03, unemployment insurance decision that concluded he had been overpaid unemployment insurance benefits. After due notice was issued, a telephone conference hearing was held on February 7, 2019 and was consolidated with the hearing for appeal 19A-UI-00677-SC-T. The claimant participated. The Claimant's Exhibit A and the Department's Exhibits 1 through 3 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents.

ISSUE:

Is the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective October 7, 2018. During his weekly continued claim for the week ending December 1, 2018, the claimant reported he was not able to and available for work. He had been in the hospital and recovering from pneumonia the two weeks prior. During the fact-finding interview held on December 13, 2018, the claimant was advised to submit a doctor's note releasing him to return to work. The claimant did not provide the note within five days of the interview and he was disqualified from receiving benefits effective November 18, 2018. The following day, an overpayment decision was issued finding he had been overpaid for four weeks between November 18 and December 15, 2018.

The overpayment decision was mailed to the claimant's last known address of record on December 20, 2018. He received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 30, 2018. The appeal was not filed until January 24, 2019, which is after the date noticed on the disqualification decision, because the claimant was still recovering from pneumonia, it was the holiday season, and there were too many things going on. The claimant

provided a doctor's note for the hearing dated January 10, 2019, stating he was able to return to work as of December 3, 2018.

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. Bd. 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant has not established that the failure to file a timely appeal was 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). As the appeal was not timely filed, 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).

While the administrative law judge lacks the ability to make a determination on the nature of the appeal, whether a claimant is able to work, available for work, and actively and earnestly seeking work is a week-by-week determination. Therefore, the issue of whether the claimant has been overpaid consistent with the decision from the remanded issue included in appeal 19A-UI-00677-SC-T is remanded to the Benefits Bureau of Iowa Workforce Development (IWD).

DECISION:

The December 20, 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 until such time as the agency issues a subsequent decision.

REMAND:

The issue of whether the claimant has been overpaid consistent with the decision from the remanded issue included in appeal 19A-UI-00677-SC-T is remanded to the Benefits Bureau of IWD.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn