

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A MCWILLIAMS
Claimant

APPEAL NO: 12A-UI-09311-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/02/11
Claimant: Appellant (1/R)**

Section 96.3-7 - Recovery of Overpayment of Benefits
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Michael A. McWilliams (claimant) appealed a representative's June 11, 2012 decision (reference 02) that concluded he had been overpaid unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on August 28, 2012. The claimant participated in the hearing. This appeal was consolidated for hearing with one related appeal, 12A-UI-09310-DT. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely? Was the claimant overpaid unemployment insurance benefits of \$2,344.00?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on June 11, 2012. The claimant received the decision, but not until about June 22, 2012; the claimant had been in a motorcycle accident on June 11 and was hospitalized until June 21. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 21, 2012. The appeal was not filed until it was faxed on August 3, 2012, which is after the date noticed on the disqualification decision.

After the claimant was released from the hospital, on June 22 he called the number on the representative's decision to try to get more information and to inquire about appealing the decision. He was only able to leave a message, and did not get a response. He made additional attempts in the next weeks, but was only successful in reaching someone who could give him instructions on or about August 1. He then made his appeal on August 3.

A representative issued a decision dated March 14, 2011 (reference 01) that concluded the claimant was disqualified from receiving benefits as of June 28, 2010, after a separation from employment from Manpower Inc. of Des Moines (employer). The overpayment decision was

issued in this case as a result of that disqualification decision. As determined in the concurrently issued decision in appeal 12A-UI-09310-DT, that disqualification decision has now been affirmed.

The claimant established a claim for unemployment insurance benefits effective January 2, 2011. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,344.00.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 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 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 not 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 due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

An underlying disqualification can result in an overpayment of unemployment insurance benefits.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant

acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7. In this case, because the decision causing the disqualification has now been affirmed, the claimant has received benefits but was ineligible for those benefits.

Even though those benefits were received in good faith, the overpaid benefits must be recovered in accordance with the provisions of Iowa law. The administrative law judge concludes that the claimant is overpaid benefits of \$2,344.00 pursuant to Iowa Code § 96.3-7.

DECISION:

The representative's June 11, 2012 decision (reference 02) is affirmed. The claimant is overpaid benefits of \$2,344.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs