

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH K WILKINS
Claimant

APPEAL 18A-UCX-00004-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 09/04/2011
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 5, 2012 (reference 04) unemployment insurance decision that found claimant was overpaid benefits of \$1,200.00 for three weeks between October 23, 2011 and November 12, 2011. The parties were properly notified of the hearing. A telephone hearing was held on July 9, 2018. The claimant participated personally. Sharon Bowers participated on behalf of Iowa Workforce Development (“IWD”). The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed a claim for unemployment insurance benefits with an effective date of September 4, 2011. She provided IWD with an address of 913 18th Ave SW, which was where she resided until the beginning of November of 2011. Claimant moved to 947 18th Ave SW at the beginning of November of 2011. She updated her address with the United States Postal Service at that time but does not recall updating her address with IWD when she moved in November of 2011.

Claimant’s administrative records establish that by December 4, 2012, claimant’s address had been updated with IWD to reflect her correct address at 947 18th Ave SW. See DBRO printout. Claimant’s administrative records establish that a decision dated December 5, 2012 (reference 04) finding that the claimant was overpaid benefits of \$1,200.00 for three weeks between October 23, 2011 and November 12, 2011 was mailed to her at 947 18th Ave SW. See NMRO. Claimant did not receive the overpayment of benefits decision in the mail.

Claimant had actual knowledge of the overpayment of benefits decision in August of 2014 when she contacted IWD by telephone and was told about it. In June or July of 2017 claimant learned about the decision dated November 18, 2011 (reference 02) that had originally denied her benefits effective October 23, 2011 when she spoke to an IWD representative by telephone and they found a note in her administrative records.

In August of 2017, claimant sent paperwork to IWD trying to appeal the December 5, 2012 (reference 04) decision. Claimant could not recall what address she sent this paperwork to. In mid-February of 2018, claimant telephoned IWD again to inquire whether her paperwork had been received. Claimant telephoned IWD again at the end of February or beginning of March of 2018 and she found out at this time that IWD had not received any paperwork from her.

Claimant filed an appeal to the December 5, 2012 (reference 04) decision on May 24, 2018 using the online appeal process. Claimant's delay from the end of February or beginning of March of 2018 (when she had actual knowledge that her appeal was not received) to when she finally filed the appeal online on May 24, 2018 was due to her busy personal life and raising children.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that she did not.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

(emphasis added).

An appeal must be filed within ten days after notification of that decision **was mailed**. Iowa Code § 96.6(2)(emphasis added). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *Beardslee*, 276 N.W.2d at 377. The question becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974). However, an appeal may be considered timely if it is established that the delay in submission was due to division error or misinformation or due to delay or other action of the United States postal service.

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.

In this case, the decision was mailed to the claimant at her correct last known address as supplied to IWD by the claimant. 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 Code § 96.6(2). The ten calendar days after notification was mailed to the claimant's last known address expired in December of 2012.

Further, in August of 2014, claimant had actual knowledge and notification of the overpayment decision and failed to submit an appeal until sometime in August of 2017, when she mailed paperwork to IWD. This is more than ten days between when claimant had actual knowledge of the decision and then chose to submit an appeal.

When she learned that her appeal documents were never received by IWD sometime at the end of February or beginning of March of 2018, she again waited almost two months (until May 24, 2018) to file an appeal online. It is clear that claimant was never deprived of a **reasonable** opportunity to assert a timely appeal. As such, claimant's appeal is not considered timely and

the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the underlying overpayment issue. Iowa Code § 96.6(2).

DECISION:

The claimant did not file a timely appeal. The December 5, 2012 (reference 04) unemployment insurance decision is affirmed. The unemployment insurance decision shall stand and remain in full force and effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs