

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESSICA LAFARR
Claimant

APPEAL NO. 22A-UI-04886-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CCRC OF AMES LLC
Employer

OC: 11/28/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On February 17, 2022, Jessica LeFarr (claimant) filed a late appeal from the January 24, 2022 (reference 06) decision that held the claimant was overpaid \$248.00 in regular state benefits for the week that ended January 1, 2022, due to the claimant's failure to report wages earned from employer CCRC of Ames, L.L.C. during that week. After due notice was issued, a hearing was held on March 31, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the January 24, 2022 (reference 06) decision and of the following additional Agency administrative records: DBRO, KCCO, WAGE-A, the reference 06 Decision Overpayment Worksheet, and the hour and wage information requested by IWD and provided by the employer.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

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

On January 24, 2022, Iowa Workforce Development mailed reference 06 decision to the claimant's Ames address of record. The reference 06 decision held the claimant was overpaid \$248.00 in benefits for the week that ended January 1, 2022, based on the deputy's conclusion that the claimant had failed to report wages from CCRC of Ames, L.L.C. for that week. The reference 06 decision stated that the decision would become final unless an appeal was postmarked by February 3, 2022 or was received by the Appeals Section by that date. The reference 03 decision was delivered to the claimant's Ames address in a timely manner, prior to the deadline for appeal. The claimant did not file an appeal by the February 3, 2022 appeal deadline.

The claimant traveled with her minor child from Ames to her native state of Vermont January 22, 2022 to attend family member's funeral. At the time the claimant left Iowa, the claimant planned

to fly back to Ames January 29, 2022. The claimant has a roommate, but does not have that person review, respond to, or alert the claimant to time-sensitive correspondence. On January 27, 2022, the claimant's son tested positive for COVID-19. The claimant advises that she could not return to Iowa for eight days following her child's positive COVID-19 test. That meant the claimant had to delay her return trip to February 4, 2022. Due to the child's illness and unvaccinated status, the claimant was no longer able to fly back to Iowa and had to drive back instead. The claimant delayed her return drive to February 6, 2022. The drive to Ames took 18.5 hours. The claimant arrived home late in the evening on February 7, 2022. The claimant reviewed her mail on February 8, 2022. The reference 06 overpayment decision was amongst the claimant's accumulated mail. The claimant did not immediately file an appeal and instead delayed filing the appeal until February 17, 2022. On February 17, 2022, the claimant called Iowa Workforce Development and then emailed an appeal to the Appeals Bureau email address. The Appeals Bureau received the emailed appeal on February 17, 2022.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal. The January 24, 2022 (reference 06) decision was delivered to the claimant's Ames address of record in a timely manner, prior to the February 3, 2022 deadline for appeal. The claimant was out of the state when the decision arrived and had no reason to expect the decision during her absence. Given the claimant's anticipated brief absence and her particular living arrangements, the claimant did not act unreasonably by not arranging to have someone review and alert her to time-sensitive mail delivered in her absence. Because the claimant was detained out of state due to her child's illness, the claimant did not have a reasonable opportunity to file an appeal by the February 3, 2022 deadline and continued to have the reasonable basis for delaying the appeal until she returned home on February 7, 2022 and reviewed the decision on February 8, 2022. The appeal was at that time already five days late. However, after the claimant reviewed the decision on February 8, 2022, she then unreasonably delayed filing the appeal for nine days until she emailed an appeal on February 17, 2022. Based on this period of unreasonable delay, the late appeal cannot be deemed a timely appeal. The administrative law judge notes the delay in filing the appeal was in no manner attributable to Iowa Workforce Development or to the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the decision from which the claimant appeals in the present matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the January 24, 2022 (reference 06) decision was untimely. The decision that held the claimant was overpaid \$248.00 in regular state benefits for the week that ended January 1, 2022, remains in effect.

In the event this decision regarding timeliness of appeal is reversed upon further appeal, there is sufficient evidence in the record for entry of a decision on the merits without need for further hearing.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

April 19, 2022
Decision Dated and Mailed

jet/mh