

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DALTON H WITTE
Claimant

APPEAL NO. 18A-UI-07245-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA
Employer

OC: 12/17/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Dalton Witte filed an appeal from the April 20, 2018, reference 04, decision that held he was overpaid \$282.00 in benefits for the week of March 25-31, 2018 benefits, based on the Benefits Bureau deputy's conclusion that Mr. Witte incorrectly reported his wages from CNH America, L.L.C. After due notice was issued, a hearing was held on July 24, 2018. Mr. Witte participated and presented additional testimony through Tracy Chew and Kelly Timmerman. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibits A through E and Department Exhibits D-1 through D-6 were received into evidence.

ISSUES:

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

Whether Mr. Witte was overpaid \$282.00 in benefits for the week of March 25-31, 2018 benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dalton Witte established an original claim for benefits that was effective December 17, 2017. Iowa Workforce Development set Mr. Witte's weekly benefit amount at \$454.00. Mr. Witte subsequently established an additional claim for benefits that was effective March 25, 2018. Since February 2017, Mr. Witte has been employed by CNH America on a full-time basis. Mr. Witte's usual work hours are 6:00 a.m. to 4:30 or 6:30 p.m., Monday through Thursday. The employer temporarily laid off Mr. Witte for the week that began Sunday, March 25, 2018. At the time of the layoff, CNH America had in place a supplemental unemployment benefit plan (SUB) approved by Iowa Workforce Development Iowa and governed by Administrative Code rule 871-23.3(2)(e).

Mr. Witte returned to work on Monday, April 2, 2018. Mr. Witte made a timely weekly claim for the benefit week that ended March 31, 2018. Mr. Witte reported \$133.00 in holiday pay in anticipation of the holiday pay he expected to receive for Good Friday, March 30, 2018. Based on the \$454.00 weekly benefit amount and the \$133.00 in reported holiday pay, Iowa Workforce Development determined that Mr. Witte was eligible for \$434.00 in unemployment insurance

benefits for the week that ended March 31, 2018, provided he met all other eligibility requirements. The agency paid out that amount to Mr. Witte by putting the funds on a debit card issued to Mr. Witte.

On Friday, April 6, 2018, the employer issued pay to Mr. Witte for the pay period of Monday, March 26, 2018 through Sunday, April 1, 2018. The employer included \$150.00 as payment pursuant to the supplemental unemployment benefit plan (SUB) approved by Iowa Workforce Development. The employer also included \$132.48 in holiday pay for Good Friday. These two amounts totaled \$282.48.

On April 6, 2018, Equifax, on behalf of the employer, electronically protested Mr. Witte's additional claim for benefits. Equifax included reference to the \$282.48 employer payment to Mr. Witte, but erroneously asserted in the protest that the payment was regular wages for 17 hours of work. The information provided by Equifax prompted Iowa Workforce Development to schedule a one-party fact-finding interview for Thursday, April 19, 2018, so that a Benefits Bureau deputy could discuss with Mr. Witte that pay he received for the week that ended March 31, 2018. Mr. Witte was at work at the time of the fact-finding interview and did not participate in the fact-finding interview.

On Friday, April 20, 2018, Mr. Witte took a copy of his paystub for the pay period of March 26, 2018 through April 1, 2018 to the Burlington Workforce Development Center. The paystub reflected the \$150.00 in SUB pay and the \$132.48 in holiday pay for March 30, 2018. Mr. Witte assumed that since he had provided a copy of his paystub to Iowa Workforce Development that that meant the weekly claim reporting issue was resolved. It was not.

On April 20, 2018, Iowa Workforce Development mailed a copy of the April 20, 2018, reference 04, decision to Mr. Witte at his last-known address of record. The April 20, 2018, reference 04, decision held that Mr. Witte was overpaid \$282.00 in benefits for the week of March 25-31, 2018 benefits, based on the Benefits Bureau deputy's conclusion that Mr. Witte incorrectly reported his wages from CNH America, L.L.C. by omitting \$282.00 in wages from his weekly claim report. The decision stated that an appeal from the decision must be postmarked by April 30, 2018 or be received by the Appeal Section by that date. Mr. Witte did not receive the decision and did not file an appeal by the April 30, 2018 appeal deadline.

On June 27, 2018, Iowa Workforce Development (IWD) mailed an Overpayment Statement of Amount Due to Mr. Witte at his last-known address of record. The Overpayment Statement was Mr. Witte's first notice that there was a problem with the unemployment insurance benefits he had received for the week that ended March 31, 2018. On July 6, 2018, Mr. Witte went to the Burlington Workforce Development Center, completed an Iowa Workforce Development appeal form with the assistance of IWD staff, and submitted the completed form to the Burlington Workforce Development Center staff. The Appeals Bureau received the appeal via fax on July 6, 2018.

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).

Mr. Witte's appeal was filed on July 6, 2018, when the Appeals Bureau received the electronically transmitted appeal.

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). 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 Mr. Witte did not have a reasonable opportunity to file an appeal by the April 30, 2018 deadline because he had not received the April 20, 2018, reference 04, decision. The evidence establishes good cause to treat the late appeal as a timely appeal. At the time Mr. Witte filed his appeal on July 6, 2018, he still had not received a copy of that decision. Mr. Witte filed his appeal on the ninth day after Iowa Workforce Development mailed the Overpayment Statement. 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). Mr. Witte did not unreasonably delay filing his appeal once he had notice of the problem. The delay in filing the appeal was attributable to Iowa Workforce Development and/or the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to rule on the merits of the appeal.

Iowa Administrative Code rule 871-23.3(2)(e) provides in relevant part as follows:

23.3(2) The term “wages” shall not include:

e. Supplemental unemployment benefit plan (SUB). The term “wages” shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ, under a plan or system established by such employing unit, with approval of the department. Such plan or system must make provision for payment to a trust fund or similar account on behalf of individuals performing services for it. The account must be used to pay supplemental unemployment benefits to such employing unit’s employees over and above any sum to which such employees might be entitled under the provisions of the state employment security law. Such payments to employees are not remuneration for the purposes of reducing or preventing payment of unemployment benefits.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recovery the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Mr. Witte was eligible for the \$434.00 in unemployment insurance benefits that he received for the week that ended March 31, 2018 and was not overpaid benefits for that week. Mr. Witte correctly reported holiday pay when he made his claim for the week that ended March 31, 2018. Mr. Witte correctly omitted the payment from the supplemental unemployment benefit plan (SUB) when he made his weekly claim. Mr. Witte had no wages to report for the week that ended March 31, 2018 and correctly reported that when he made his weekly claim.

DECISION:

The April 20, 2018, reference 04, decision is reversed. The claimant’s appeal was timely. The claimant was not overpaid benefits for the week that ended March 31, 2018.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs