

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLI E OWENS
Claimant

APPEAL 18A-UI-08453-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/12/17
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code §96.5(8) – Administrative Penalty
Iowa Code §96.4(3) – Unemployment Insurance Benefits Eligibility
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

The claimant/appellant, Kelli E. Owens, filed an appeal from the December 5, 2017, (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded she was ineligible to receive unemployment insurance benefits from November 26, 2017 through February 10, 2018, because she made false statements concerning her employment and earnings from December 20, 2015 through March 26, 2016. The disqualification was imposed through administrative penalty.

The parties were properly notified of the hearing. A telephone hearing was held on September 4, 2018 with Administrative Law Judge, Jennifer L. Beckman. The hearing was held jointly with Appeals 18A-UI-08451-JC-T and 18A-UI-08455-JC-T. The claimant, Kelli E. Owens, participated personally. Kevan Irvine, Program Coordinator, participated on behalf of IWD. IWD Exhibits 1-7 and Claimant Exhibits A-C were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Whether IWD correctly established a claim for an overpayment of unemployment insurance benefits?

Did IWD properly impose an administrative penalty based upon the claimant’s misrepresentation?

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 November 12, 2017.

On November 28, 2017, Investigator, Sean Clark, mailed a letter to the claimant informing her of an administrative penalty by way of disqualification of future benefits (Department Exhibit 3-3). The claimant emailed Investigator Clark back on November 30, 2017 (Department Exhibit 3-5). He replied on December 1, 2017, explaining to the claimant that a decision would be rendered with appeal rights (Department Exhibit 3-5).

An initial unemployment insurance decision (Reference 01) resulting in a disqualification of future benefits was mailed to the claimant's last known address of record on December 5, 2017 (Department Exhibit 3-1). The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 15, 2017. It is unclear whether the claimant received the actual decision outlining the 11 week penalty but she acknowledged she knew about it and did not intend to appeal it because she planned to just wait out the penalty period.

When the claimant established an additional claim, effective date July 22, 2018, she received an initial decision stating she was ineligible due to an unpaid overpayment due to fraud (See reference 07 decision/Appeal 18A-UI-08455-JC-T) and then filed an appeal to the related decisions, including the one at issue here. The appeal was not filed until August 7, 2018, which is after the date noticed on the disqualification decision (Claimant Exhibit A, Department Exhibit 7).

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:

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 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).

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, through her own testimony, acknowledged she knew of the 11 week penalty, based upon her contact with Investigator Clark, who warned the claimant that an initial decision would be released, denying her benefits for 11 weeks and would contain appeal rights (Department Exhibit 3-5). She credibly testified she did not intend to file an appeal to the 11 week penalty, but instead would wait out the penalty. She later changed her mind and filed the appeal on August 7, 2018 (Department Exhibit 7/Claimant Exhibit A). This was approximately eight months after the decision was rendered and therefore beyond the 10 day period to appeal.

Based on the evidence presented, the administrative law judge concludes that the claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not 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). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and 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).

DECISION:

The December 5, 2017, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect: IWD correctly imposed the administrative penalty due to the claimant's misrepresentation.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn