

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHY J KURTH
Claimant

APPEAL 18A-UI-08614-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/22/18
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 1, 2018 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing was held on September 5, 2018. The claimant, Kathy J. Kurth, participated personally. Kevan Irvine participated on behalf of IWD. IWD Exhibits 1 - 8 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?

Is the claimant ineligible for benefits due to an outstanding fraud overpayment balance?

FINDINGS OF FACT:

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

A decision dated August 1, 2018 (reference 02) was mailed to the claimant at her correct address of record. The decision stated that it becomes final unless an appeal is postmarked by August 11, 2018, or received by Iowa Workforce Development Appeal Section by that date. The decision further stated that if this date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day.

Claimant filed her appeal using the online system on August 15, 2018. Claimant did not file an appeal before the August 11, 2018 deadline because an Iowa Workforce Development representative told her not to file an appeal until she knew whether her separation from employment with Jeld-Wen Inc. would be disqualifying. Claimant received an allowance decision regarding her separation from Jeld-Wen Inc. on August 14, 2018 and filed her appeal of the August 1, 2018 (reference 02) decision the next day.

A decision was issued on August 6, 2014 (reference 03) which found that the claimant was overpaid benefits of \$3,179.00, including a 15% penalty due to misrepresentation. The August 6, 2014 (reference 03) decision has been affirmed.

To date, claimant has failed to pay the outstanding overpayment amount owed, including the penalty imposed due to misrepresentation. The current outstanding overpayment balance owed is \$1,095.00 plus a 15% penalty of \$476.85 for a total owed of \$1,571.85.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant filed a timely appeal. The administrative law judge further concludes that the claimant is not eligible for benefits until the balance of the benefits received by the claimant due to misrepresentation, including all penalties, interest, and lien fees are paid in full. Benefits are denied at this time.

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did file a timely appeal.

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.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). 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).

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service 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 is 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.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1) "a" and "b," on the date it is received by the division.

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.

The claimant has provided a good cause reason for failure to comply with the jurisdictional time limit to file an appeal because she received incorrect information regarding filing an appeal from the agency. Iowa Admin. Code r. 871-24.35(2). As such, the appeal is considered timely. The next issue is whether the claimant is eligible for benefits at this time.

Iowa Code section 96.5(13) provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

Claimant currently owes a balance of \$1,571.85 due to a decision issued on August 6, 2014 (reference 03) which found that the claimant failed to report or incorrectly reported wages, resulting in determination that the claimant engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud overpayment balance remains unpaid, claimant is not eligible for benefits at this time. See Iowa Code § 96.5(13).

DECISION:

The claimant filed a timely appeal. The August 1, 2018 (reference 02) unemployment insurance decision is affirmed. The claimant is not eligible for benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, interest, and lien fees, provided claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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