

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DYAMOND N OVERTON
Claimant

APPEAL 22R-UI-08293-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment / Lost Wages Assistance

STATEMENT OF THE CASE:

On October 8, 2021, claimant Dyamond N. Overton filed an appeal from the September 23, 2021 (reference 04) unemployment insurance decision that found the claimant was overpaid Lost Wages Assistance Program (“LWAP”) benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Friday, May 20, 2022. Appeal numbers 22R-UI-08289-LJ-T, 22R-UI-08290-LJ-T, 22R-UI-08291-LJ-T, 22R-UI-08292-LJ-T, 22R-UI-08293-LJ-T, 22R-UI-08294-LJ-T, and 22R-UI-08295-LJ-T were heard together and created one record. The claimant, Dyamond N. Overton, personally participated. The employer, G M R I, Inc., participated through witness Kris Jones, Managing Partner; and was represented by hearing representative Amanda Lange. No exhibits were offered or admitted. The administrative law judge took official notice of the administrative record.

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 decision finding claimant was not eligible for benefits because she voluntarily quit her employment was mailed to her last known address of record on June 15, 2021. She did receive the decision within ten days, “around the time” it was sent to her. The first sentence of the decision states, “If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay.” The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 25, 2021. The appeal was not filed until October 8, 2021, which is after the date noticed on the disqualification decision.

Claimant contacted Iowa Workforce Development (“IWD”) when she received the decision because she was confused. Some of the paperwork she had received indicated she was eligible for benefits, while the most recent papers she received stated she was not eligible.

Claimant was advised to wait to file an appeal until she received an overpayment decision and a balance in the mail.

Next, five decisions finding claimant was overpaid benefits were all mailed to her last known address of record on September 23, 2021. These decisions included:

- Reference 02 decision finding overpayment of regular UI benefits
- Reference 03 decision finding overpayment of FPUC benefits
- Reference 04 decision finding overpayment of LWAP benefits
- Reference 05 decision finding overpayment of PEUC benefits
- Reference 06 decision finding overpayment of FPUC benefits

She did receive the decisions within ten days, in late September 2021. The decisions contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 3, 2021. The appeal was not filed until October 8, 2022, which is after the date noticed on the disqualification decision.

Claimant could not recall why she waited until after the deadline passed to file her appeal. She remembers receiving “mixed messages” about sending emails to IWD, and it was difficult to have a scheduled phone call. Claimant explained she was trying to contact IWD to understand the reasons for the overpayments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant failed to file a timely appeal.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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 Admin. Code r. 871-24.35(1) provides:

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 [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

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.

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).

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Based on claimant's testimony, it appears misinformation from IWD may have attributed to her delay in appealing the June 15, 2021 (reference 01) separation decision. However, claimant then failed to heed the guidance she received and timely appeal the overpayment notices that arrived. She had no reasonable explanation for her failure to meet the October 3 appeal deadline.

Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The September 23, 2021, (reference 04) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 29, 2022
Decision Dated and Mailed

lj/lj