

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**RUTHANN SCHROEDER**  
Claimant

**APPEAL 20A-UI-15179-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 05/03/20**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

On November 19, 2020, the claimant filed an appeal from the July 24, 2020, (reference 05) unemployment insurance decision that found claimant overpaid benefits in the amount of \$246.00. The claimant was properly notified about the hearing. A telephone hearing was held on January 22, 2021. Claimant participated personally and was represented by Thomas Morhauser. Department Exhibit 1 was received.

**ISSUES:**

Is the appeal timely?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 24, 2020, Iowa Workforce Development (IWD) issued a reference 05 unemployment insurance decision that found claimant overpaid unemployment insurance benefits in the amount of \$246.00 because she failed to properly report wages while receiving unemployment insurance benefits. The decision warned that an appeal was due by August 3, 2020. Claimant received the decision within the appeal period. Claimant did not file an appeal because she did not disagree with the decision.

On November 10, 2020, IWD mailed claimant reference 06 and 07 unemployment insurance decisions finding claimant overpaid benefits. Claimant timely appealed the overpayment decisions.

**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, in pertinent part:

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. . . . 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.

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. Bd. 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 unemployment insurance 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 administrative law judge concludes that failure to follow the clear written instructions 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 July 24, 2020, (reference 05) unemployment insurance decision is affirmed. The appeal is untimely. The decision finding claimant overpaid unemployment insurance benefits in the amount of \$246.00 remains in effect.



---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

February 9, 2021  
Decision Dated and Mailed

cal/mh