

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAVID M KLOPPENBURG**  
Claimant

**APPEAL 17A-UI-10377-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 12/22/13  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Code § 96.16(4) – Offenses and Misrepresentation  
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the February 8, 2016 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits and IWD imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on November 14, 2017. The claimant, David M. Kloppenburg, participated personally. Kendra Mills, Investigator II, participated on behalf of IWD. IWD Exhibits 1 through 11 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 claimant’s appeal timely?

**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 December 22, 2013. At that time, he provided Iowa Workforce Development (“IWD”) with the mailing address of 230 East Manning in Ottumwa, Iowa. The claimant stated he moved from that location sometime between January and March 2014. The claimant did not provide an updated address to the Iowa Workforce Development, yet he continued to file weekly continued claims for unemployment insurance benefits periodically in 2014 and 2015. The claimant did not update his mailing address with the Iowa Workforce Development until March 3, 2016. (See KLOG/Administrative record.)

As a result of information “flagged” regarding the claimant, IWD conducted an audit and discovered that the claimant was incarcerated during a time period in which he also made weekly continued claim for the period January 12, 2014 and March 15, 2014. Upon completion of the investigation, the agency concluded the claimant had been overpaid \$2,016.00 for the weeks and a 15% administrative penalty was added due to alleged misrepresentation by the claimant.

An initial unemployment insurance decision regarding the 2014 overpayment (OC: 12/22/13, Reference 02) was mailed to claimant's last known address of record on February 8, 2016 (See Department Exhibit D-11). The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 18, 2016. The claimant denied receipt of the decision. The appeal was not filed until October 10, 2017, which is after the date noticed on the disqualification decision (See Department Exhibit D-2).

The claimant asserted he has “horrible memory”, and in April 2017, the claimant opened a new unemployment insurance claim. Within a few weeks, he learned of the overpayment after he did not receive expected benefits. The claimant stated he contacted IWD sometime after filing his April 2017 claim in April or May about why he had not received any benefits. The claimant was told by an IWD representative that he had an overpayment, and the claimant stated he tried to file an appeal the first time but never heard back from IWD. The claimant reported he spoke to a male representative who reportedly prepared his appeal for him. The claimant did not have any specific details of when he attempted to file his first appeal, how he filed it, or any information about who assisted him.

When he did not hear back from IWD after reportedly filing his appeal in April or May 2017, he did not follow up with IWD until he filed the appeal on October 10, 2017 (See Department Exhibit D-2). The reason the claimant delayed filing his appeal is because he procrastinated and began collecting benefits after the overpayment was offset, and “kind of forgot about it”.

#### **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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant did not file a timely appeal.

The credible evidence presented is that the claimant established an unemployment claim effective December 22, 2013, and moved from the address of record he provided to IWD sometime between January and March 2014. The claimant did not notify IWD that he had moved or of another address until March 2016, even though he continued collecting unemployment insurance benefits. Claimants are responsible for notifying IWD if they move, especially if they are continuing to make weekly continued claims, to ensure that IWD has accurate contact information if questions or issues arise. The claimant failed to do so and as a result, he did not initially receive the notice of decision dated February 8, 2016 (Department Exhibit D-11).

Even if the claimant's failure to report a new address (even though he had a valid claim in 2014 and 2015) is excused, the claimant learned of the overpayment in April 2017, when he established a new unemployment claim, but did not receive benefits as he anticipated. At that time, he was put on notice in April or May 2017, that there was a looming overpayment. The claimant alleged he attempted to file an appeal in April or May 2017, but could not furnish any specific details. The administrative law judge did not find the claimant's account of an April or May 2017 appeal being submitted to be credible. Further, the claimant did not follow up with IWD after he thought he had filed his appeal for almost six months, as a reasonable person would do. The credible evidence presented is the claimant's appeal was not filed until October 10, 2017 (Department D-2). By the claimant's own admission, the delay was in part due to procrastination and forgetting about it.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal when he learned of the overpayment in April or May 2017. He delayed filing his appeal until October 10, 2017, which is after the final day to appeal, and after ten days' notice of the unfavorable decision. 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 since the appeal was not timely filed pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the merits 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 February 8, 2016 (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant was overpaid benefits. IWD correctly imposed the administrative penalty.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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