

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STACEY J LASH
Claimant

APPEAL NO. 11A-UI-09685-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/13/11
Claimant: Appellant (1)**

Section 96.3-7 - Recovery of Overpayment of Benefits
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Stacey J. Lash (claimant) appealed a representative's June 24, 2011 decision (reference 03) that concluded he had been overpaid unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on August 16, 2011. The claimant participated in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal of the overpayment decision timely or are there legal grounds under which it should be treated as timely?

Was the claimant overpaid unemployment insurance benefits in the amount of \$603.00?

DISPOSITION:

Affirmed.

FINDINGS OF FACT:

The representative's overpayment decision was mailed to the claimant's last-known address of record on June 24, 2011. The claimant received the decision, but not until July 17, when he returned from a trucking run. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 4, 2011. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was July 5. The appeal was not filed until it was postmarked on July 19, 2011, which is after the date noticed on the disqualification decision.

A representative issued a decision dated April 4, 2011 (reference 01) that concluded the claimant was disqualified from receiving benefits after what was an at least temporary separation from employment with CRST Van Expedited, Inc. (employer). The claimant received that decision and appealed. A hearing was set on that appeal for May 11, 2011. The claimant received the hearing notice for that hearing and responded by calling the Appeals Section to indicate that he would be

available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge assigned to that case called that number at the scheduled time for the hearing, the claimant was not available; therefore, the claimant did not participate in that hearing. As a result, on May 12 that administrative law judge issued a decision under 11A-UI-05004-ET affirming the representative's disqualification decision.

The claimant does not remember receiving that administrative law judge's decision. However, he testified that he was not saying he did not receive it, and he also indicated in his testimony there was a possibility the decision might have been misplaced or not opened. The claimant has not provided sufficient evidence to rebut the presumption that the administrative law judge's decision was received. The claimant did not appeal that administrative law judge's decision to the Employment Appeal Board.

The overpayment decision was issued in this case as a result of the April 4, 2011 (reference 01) disqualification decision, as affirmed by the administrative law judge's decision issued in 11A-UI-05004-ET.

The claimant established a claim for unemployment insurance benefits effective February 13, 2011. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$603.00.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 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). 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. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal, because he did not have an opportunity to receive it until after the deadline for appeal had passed. He did promptly make an appeal upon receiving the decision.

The administrative law judge concludes that the appellant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or

delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The only substantive issue in this case is whether the claimant is overpaid benefits of \$603.00.

It does not appear that the claimant made a further and timely appeal of the disqualification decision that caused the overpayment in this case, nor did he provide sufficient evidence to rebut the presumption that the decision was received at his address, even if he then misplaced it or failed to open it. If the claimant had a dispute with whether or not he should have been disqualified as a result of the separation from the employer, then he needed to have filed a further appeal from the administrative law judge's decision in 11A-UI-05004-ET. Iowa Code § 96.6-2; Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979). The decision causing the disqualification has now become final and is not subject to review in this case.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits.

The administrative law judge concludes that the claimant is overpaid benefits of \$603.00 pursuant to Iowa Code § 96.3-7 due to the disqualification decision issued on April 4, 2011, as affirmed by the administrative law judge's decision in 11A-UI-05004-ET. Even though those benefits were received in good faith, the overpaid benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's June 24, 2011 decision (reference 03) is affirmed. The claimant is overpaid benefits of \$603.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw