

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRENDA REYNOLDS
Claimant

APPEAL NO. 21A-UI-06727-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATION RECOVERY**

OC: 11/08/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.16(4) and 96.5 – Unpaid Fraud Overpayment

STATEMENT OF THE CASE:

The claimant, Brenda Reynolds, filed a late appeal from the December 10, 2020, reference 01, decision that denied benefits, based on the Agency's representative's conclusion that the claimant had an unpaid fraud overpayment balance. After due notice was issued, a hearing was held on May 13, 2021. Claimant participated. Investigator Daniel Noonan of Iowa Workforce Development Investigations & Recovery Unit, provided written notice that the I & R unit waived its presence at the appeal hearing beyond submission of proposed Agency exhibits. Exhibit A, the claimant's appeal email, was received into evidence. The administrative law judge took official notice of the December 10, 2020, reference 01, decision.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 10, 2020, Iowa Workforce Development mailed the December 10, 2020, reference 01, decision to the claimant's Council Bluffs last-known address of record. The decision denied benefits, based on the IWD investigator's conclusion that the claimant had an unpaid fraud overpayment balance. The decision stated that the decision would become final unless an appeal was postmarked by December 20, 2020 or was received by the Appeal Section by that date. The decision provided clear and concise instructions for filing an appeal online, by fax, by email, and by mail. The decision provided a customer service telephone number the claimant could call if she had questions or needed assistance with filing the appeal. The weight of the evidence establishes that the decision arrived at the locked mailbox at the address of record in a timely manner, prior to the deadline for appeal.

At the time the decision was mailed to the claimant in December 2020, the claimant was residing in an apartment provided by a homeless shelter. The claimant was residing in the apartment with two other women from the shelter. The claimant has continued to reside at the same apartment. The claimant and her roommates did not get access to the mailbox key until

mid-January 2021 or early February 2021. When they go access, the December 10, 2020, reference 01, decision was part of the mail waiting for the claimant. The claimant elected not to open and review correspondence. If she had opened and reviewed the correspondence, she would have observed the instructions for appeal, the customer service number, as well as the information indicating the appeal was past-due.

The claimant self-identifies as having ongoing mental health issues. On February 26, 2021 the claimant was briefly hospitalized for observation in connection with acute mental health issues. The claimant was discharged from the hospital on February 28, 2021 and returned home at that time.

On March 3, 2021, the claimant emailed an appeal to the Appeals Bureau. The claimant wrote:

Unemployment appeals my name is Brenda Reynolds my social is ... calling because of ... claim that you guys have that I would like to appeal my phone number is ... please help I don't understand what I need to do.

The Appeals Bureau docketed the emailed appeal on March 3, 2021.

REASONING AND CONCLUSIONS OF LAW:

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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency

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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal. The evidence in the record establishes good cause for a delay in filing the appeal to mid-January 2021 to the beginning of February 2021. Though the evidence indicates the December 10, 2020, reference 01, decision was delivered to the mailbox at the address of record in a timely manner, the claimant did not gain access to the locked mailbox until mid-January or beginning of February 2021. If the claimant had taken reasonable steps to file an appeal within a reasonable time after gaining access to the locked mailbox, the claimant would be in a stronger position to argue that her appeal should be treated as timely. See Iowa Administrative Code rule 871-24.35(2) (regarding mail-associated delays). However, once the claimant received the decision into her possession in mid-January to early February 2021, the claimant did not take reasonable and timely steps to file an appeal. While the administrative law judge is sympathetic to the claimant's circumstances, the claimant's decision not to read the correspondence and to delay filing the appeal for at least a month after she received was unreasonable. There is not good cause to treat the March 3, 2021 appeal as a timely appeal.

Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the December 10, 2020, reference 01, decision that denied benefits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The December 10, 2020, reference 01, decision that denied benefits, based on the Agency's representative's conclusion that the claimant had an unpaid fraud overpayment balance, remains in effect.



James E. Timberland
Administrative Law Judge

May 20, 2021
Decision Dated and Mailed

jet/ol

Note to Claimant:

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.