

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MONIQUE LEWIS

Claimant

HCL AMERICA INC

Employer

APPEAL NO. 22A-UI-07567-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20

Claimant: Appellant (4)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.5(5) – Wages
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 2, 2022, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 11, 2022. The claimant did participate. Employer failed to respond to the hearing notice and did not participate. The administrative law judge took notice of the administrative records.

ISSUES:

Whether the appeal is timely?

Is claimant overpaid benefits?

Is the claimant totally, partially or temporarily unemployed?

Did the claimant correctly report wages earned?

Is the claimant eligible for benefits based on the wages earned?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on March 2, 2022. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 12, 2022. The appeal was not filed until March 30, 2022, which is after the date noticed on the disqualification decision. Claimant stated she moved to another unit in the same apartment complex, but mail was still sent to her old unit, and not forwarded to her in a timely basis. Claimant filed the appeal the day she received the decision.

Claimant was terminated from her position in early April, 2020 as employer shut down the section where claimant worked. As a part of her termination, claimant received severance

monies. Claimant received two payments. She reported the first receipt of payment, but reported in for the week ending April 25, 2020 when the payment covered the week of April 18, 2020. Claimant did not report her second receipt of payment at all. The payments received by claimant – covering the weeks ending April 18, 2020 and May 2, 2020 were each in excess of claimant's weekly benefit amount plus \$15.00.

REASONING AND CONCLUSIONS OF LAW:

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 begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 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). 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 as she did not receive the decision until well after the due date for the appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was potentially due to an 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 is therefore deemed timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

For the reasons that follow, the administrative law judge concludes as follows

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. *This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c".* The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3, are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

(emphasis added).

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

Iowa Admin. Code r. 871-23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

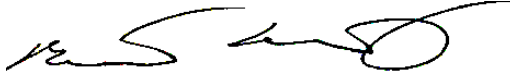
The credible evidence in this case is that claimant received \$500.00 in regular unemployment insurance benefits for the week ending April 18, 2020, even though claimant received a special payout for that week in an amount that would have disqualified her from receipt of unemployment benefits. Claimant reported the amount the next week, and did not receive unemployment benefits for the next week based on that reporting. For the first payout, the overpayment is a wash – the claimant was overpaid for the week ending April 18, 2020 because she reported that money the next week, and this report resulted in her not receiving unemployment benefits she was otherwise entitled to for the next week.

For the week ending May 2, 2020 credible evidence was received and not refuted that claimant received another payout that would disqualify her for the receipt of unemployment benefits for that week. Claimant did not report these earnings at all, so no setoff can be made.

Claimant was not overpaid benefits for the week ending April 18, 2020 as she reported earnings on the week ending April 25, 2020 that were actually earned on the week ending April 18. This setoff between the overpayment and underpayment for the next week means no actual overpayment was received for the week ending April 18, 2020. As a result, the claimant was overpaid benefits in the amount of \$500.00 for the week ending May 2, 2020, to which claimant was not entitled. The administrative law judge concludes therefore, that the overpayment for that week was correctly calculated.

DECISION:

The March 2, 2022, reference 01, decision is modified in favor of claimant. The appeal in this case was deemed timely, and the decision of the representative is modified to reflect an overpayment of \$500.00 for the one week ending May 2, 2020.



Blair A. Bennett
Administrative Law Judge

June 2, 2022
Decision Dated and Mailed

bab/scn