

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLEY L GAFFEY
Claimant

APPEAL 18A-UI-02103-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/16/17
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) - Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 13, 2017, (reference 06) unemployment insurance decision that denied benefits based upon the claimant's failure to report as directed by an IWD representative. After due notice was issued, a hearing was held by telephone conference call on March 14, 2018. Claimant participated. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An initial decision stating the claimant was ineligible for benefits because she failed to report when directed, was mailed to the claimant's last known address on October 13, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by 23, 2017.

The claimant has resided at the address of record for fifteen years and collects her mail once a week. She does not share the mailbox with anyone else. She stated she has had postal service delivery issues but has not contacted the post office.

The claimant denied receipt of the initial decision, as well as a notice of fact-finding interview mailed on October 6, 2017 (for an October 12, 2017 fact-finding interview), an initial decision (reference 05) dated October 13, 2017 and an overpayment initial decision (reference 07) dated

October 17, 2017. The claimant also stated she never received a voicemail on October 12, 2017 about the missed fact-finding interview. The call was made by the deputy to the claimant's confirmed home phone number.

Then on January 11, 2018, the claimant was mailed and received a letter of overpayment. The overpayment letter stemmed from the unfavorable decision at hand for this hearing. She believes she received the letter of overpayment within a week of its mailing. The claimant acknowledged she did not open the letter for a period of time. The claimant stated she did not open her mail because she has severe depression. She was not hospitalized for any time in January or February 2018.

A few days before February 14, 2018, the claimant opened the overpayment letter and contacted Iowa Workforce Development, where she learned that due to unfavorable decisions, the agency had concluded she was overpaid benefits. A few days passed and the claimant went to her parent's house to file her appeal, which was submitted on February 14, 2018 (Department Exhibit D-1).

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. 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).

Even if the claimant did not receive any of the three initial decisions (including the one at hand) that were mailed between October 13 and 17, 2017, or the notice of fact-finding interview mailed on October 6, 2017 or the phone call about the missed fact-finding interview on October 12, 2017, the claimant did receive an additional notice of an overpayment (which stemmed from the unfavorable decision at issue for the hearing) within a week of January 11, 2018. Arguably, the claimant would have received it by January 20, 2018, even with mail time and her checking mail once per week. The claimant then delayed opening the mail, which would have put her on notice that there was an unfavorable decision or overpayment issue needing resolution.

The administrative law judge is sympathetic to the claimant's diagnosis of serious depression, but the credible evidence presented does not support that the claimant was unable to open her mail for nearly three weeks (between January 20, 2018 and a few days before February 14, 2018) which delayed her call to IWD to inquire and learn of the unfavorable issue, further delaying her filing of her appeal. The record shows that the appellant did have a reasonable opportunity to file a timely appeal, if the January 20, 2018 overpayment letter was the claimant's first notice of the outstanding initial 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 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 October 13, 2017, (reference 06) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn