

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JEREMY M KONICEK
PO BOX 176
WALKER IA 52352-0176**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-01149-JTT
OC: 06/16/02 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6(2) – Timeliness of Appeal
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

Claimant Jeremy Konicek filed an appeal from the November 13, 2003, reference 05, decision that he had been overpaid \$2,547.00 for nine weeks between August 10, 2003 and October 11, 2003, due to a disqualification decision. After due notice was issued, a hearing was held by telephone conference call on February 14, 2006. Mr. Konicek participated. Department Exhibits D-1, D-2, D-3, and D-4 were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 06A-UI-01148-JTT, and the administrative law judge hereby takes official notice of the decision entered in that matter.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Agency mailed the November 13, 2003, reference 05, decision to Jeremy Konicek on November 13, 2003. The Agency mailed the decision to an erroneous address: 36 Dartmouth St SW, Cedar Rapids, IA 52404. Mr. Konicek had not provided that address to the Agency. Mr. Konicek had instead provided the Agency with the following address: 3640 12 Avenue SW, Apartment 5, Cedar Rapids, IA 52404. The Agency had previously used the correct address. Mr. Konicek did not receive the decision and did not learn of the overpayment decision until he received an overpayment billing statement in January 2006. Mr. Konicek received his copy of the November 13, 2003, reference 05, decision on January 30, 2006, and filed his appeal the same day. The November 13, 2003, reference 05, decision contained in a deadline for appeal of November 23, 2003.

The overpayment issue in this case was created by a disqualification decision that has now been reversed. See Appeal Number 06A-UI-01148-JTT.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Konicek's late appeal should be deemed timely. It does.

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, subsection 10, 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 on the date the decision is mailed. 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). Any decision mailed by the Unemployment Insurance Division is considered as having been given to the addressee to whom it is directed on the date of the document, unless otherwise indicated by the facts. 871 IAC 24.35(3).

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 is 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). An appeal submitted by any means other than mail is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. 871 IAC 24.35(1)(b). The submission of an appeal beyond the statutory or regulatory deadline will be considered timely if the evidence establishes that the delay in submission was due to Agency error or misinformation or to delay or other action of the United States postal services. 871 IAC 24.35(2). No submission shall be considered timely if the delay in filing was unreasonable, based on the circumstances in the case. 871 IAC 24.35(2)(c).

The evidence in the record establishes that Mr. Konicek was denied a reasonable opportunity to submit his appeal within the statutory ten-day deadline, due to Agency error. The evidence further indicates that Mr. Konicek filed his appeal immediately upon receiving a copy of the November 13, 2003, reference 05, decision. The administrative law judge concludes that the appeal should be deemed timely filed pursuant to Iowa Code section 96.6(2), and that the administrative law judge has 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).

The next question is whether the claimant has been overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$2,547.00 pursuant to Iowa Code section 96.3(7), as the disqualification decision that created the overpayment decision has now been reversed.

DECISION:

The claimant's appeal is deemed timely. The Agency representative's November 13, 2003, reference 05, decision is reversed. The claimant has *not* been overpaid \$2,547.00.

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