

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAVELL CLARK

Claimant

IOWA WORKFORCE DEVELOPMENT

Employer

APPEAL 19A-UI-07074-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/10

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal

Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Lavell Clark, Claimant, filed an appeal from the July 24, 2013 (reference 07) unemployment insurance decision that found he was overpaid benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 2, 2019, at 9:00 a.m. Claimant participated. Iowa Workforce Development participated through Sean Clark, Investigator II. Department's Exhibits 1 - 4 were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: An Unemployment Insurance Decision issued on July 24, 2013 determined claimant was overpaid unemployment insurance benefits in the amount of \$919.54 for the six weeks between July 1, 2012 and August 25, 2012. The decision was mailed to claimant at 1548 A Avenue NE, Cedar Rapids, Iowa on July 24, 2013. Claimant did not reside at the address but used it to receive mail at that time. In 2013, claimant and the person who resided at that address were subject to a protective order forbidding contact between them. Claimant did not receive the decision.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 3, 2013. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. August 3, 2013 fell on a Saturday; therefore, claimant's appeal was due Monday, August 5, 2013. Claimant appealed the decision on September 3, 2019 by completing a form at his local Iowa Works office. Claimant's appeal was postmarked September 4, 2019 and received by the Appeals Bureau on September 5, 2019.

The administrative record reflects that Overpayment Statements were mailed to claimant at PO Box 603, Cedar Rapids, Iowa on August 1, 2014, August 3, 2015 and September 1, 2016.

Claimant used this address to receive mail at those times. In 2015, claimant and the owner of the post office box were subject to a protective order forbidding contact between them. Claimant did not receive the Overpayment Statements.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 have a reasonable opportunity to file a timely appeal.

Claimant should have received the decision by the due date. Any delay in claimant submitting his appeal was due his decision to use a protected party's address as his mailing address. The delay was not due to any agency error or misinformation or delay of the United States Postal Service. Three overpayment statements were also mailed to claimant at his correct mailing address. Two of them were sent during periods of time when claimant and the post office box's owner were not subject to a protective order. The three overpayment statements also put

claimant on notice of the overpayment decision. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The July 24, 2013 (reference 07) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs