

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL RICHARDS
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-04288-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.7(3) –Lost Wages Assistance (LWA)
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Daniel L. Richards, filed an appeal from the December 18, 2021 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision that established an overpayment benefits. After proper notice, a telephone hearing was held on March 21, 2022. The hearing was held together with Appeals 22A-UI-04286-JC-T, 22A-UI-04287-JC-T, and 22A-UI-04283-JC-T. The claimant participated personally. Official notice of the administrative record was taken. Department Exhibit 1 was admitted. 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, the administrative law judge finds: Claimant established a claim for unemployment insurance benefits with an effective date of March 22, 2020. Claimant received \$1,500.00 in Lost Wages Assistance (LWA) benefits for the period of July 26, 2020 and August 29, 2020. The initial decision that denied benefits has been affirmed in Appeal 22A-UI-04283-JC-T.

An initial decision (reference 05) was mailed to the claimant/appellant’s address of record on December 18, 2021. The decision contained a warning that an appeal must be filed by December 30, 2021. The decision also directed the appellant to call the customer service line for assistance. Appellant did receive the decision with the appeal period. Appellant filed the appeal on February 7, 2022 (See Department Exhibit 1). Claimant filed an appeal when filing a request for waiver to overpayments. No evidence was presented that claimant’s appeal was delayed due to agency or postal service error.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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 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. 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).

An appeal to the initial decision was due December 30, 2021. Claimant filed the appeal on February 7, 2022, after the due date. The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

Based on the evidence presented, the administrative law judge concludes that 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).*

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.

Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

DECISION:

The December 18, 2021 (reference 05) Iowa Workforce Development (“IWD”) 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
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 31, 2022
Decision Dated and Mailed

jlb/scn

NOTE TO CLAIMANT: Individuals who do not qualify for regular unemployment insurance benefits and were unemployed between February 2, 2020, and June 12, 2021 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.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under “WHAT TO EXPECT FROM THE HEARING.” **The authorization number is 1 , the pin number you used for the hearing.**

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>