

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREA N BURGESS
Claimant

APPEAL 21A-UI-00281-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-26.8(2) – Postponement of Hearing

STATEMENT OF THE CASE:

On November 19, 2020, Andrea N. Burgess (claimant) appealed an unemployment insurance decision dated November 3, 2020, reference 02, that concluded she was overpaid \$856.00 in regular unemployment insurance benefits. A telephone hearing was scheduled for February 6, 2021 at 1:00 p.m. The claimant requested to postpone the hearing because she was attending class that day. The request was granted and the hearing was postponed to February 18, 2021 at 11:00 a.m. A new notice of hearing were mailed on February 5, 2021.

On February 14, the claimant scheduled a trip for the business she owns. On February 15, the claimant requested to postpone the hearing due to the business trip. The claimant's request was denied because only one postponement request can be granted unless it is due to an extreme emergency and the claimant did not request the second postponement due to an emergency situation. See Iowa Admin. Code r. 871-26.8(2). There was sufficient information in the appeal and administrative record to make a decision without testimony.

ISSUES:

Is the claimant's appeal timely?
Has the claimant been overpaid benefits?

FINDINGS OF FACT:

On November 3, 2020, Iowa Workforce Development (agency) mailed an overpayment decision to the claimant's last known address of record. She received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by November 13. The appeal was not filed until November 19, which is after the date noticed on the disqualification decision, because the claimant took additional time to gather documents she felt were necessary to the appeal.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 29, 2020. The claimant filed for and received a total of \$856.00 in regular unemployment

insurance benefits for the weeks between April 5 and May 3. The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 20A-UI-08310-JE-T. The administrative record shows the claimant did not appeal that decision to the Employment Appeal Board (EAB) within fifteen days and it has become final agency action.

In August, the claimant was approved for Pandemic Unemployment Compensation (PUA) effective March 15, 2020, due to her self-employment. To be eligible for PUA, a person must be ineligible for regular unemployment insurance benefits and can only receive one or the other, but not both. The claimant has received both regular benefits and PUA benefits for the relevant timeframe

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was not timely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

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. 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 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant filed the appeal after the deadline, and she has not established that the failure to file a timely appeal was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed, 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).

In the alternative, even if the appeal had been timely, the decision finding the claimant had been overpaid regular unemployment insurance benefits would be affirmed.

Iowa Code § 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.

Since the decision disqualifying the claimant from receiving regular unemployment insurance benefits was affirmed, and has become final agency action, the claimant was overpaid \$856.00 in benefits, which must be repaid.

DECISION:

The November 3, 2020, reference 02, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Stephanie R. Callahan
Administrative Law Judge

February 26, 2021
Decision Dated and Mailed

src/mh