

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SAFET OSMANOVIC
Claimant

APPEAL NO. 08A-UI-07097-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/20/08 R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Safet Osmanovic filed an appeal from the June 25, 2008, reference 03, decision that he was overpaid \$1,842.090 for six weeks between April 13, 2008 and May 24, 2008 due to a disqualification decision. After due notice was issued, a hearing was held by telephone conference call on August 20, 2008. Mr. Osmanovic participated. Bosnian-English Interpreter Samir Dzaferagic assisted with the hearing. The hearing was consolidated with the hearing in Appeal Number 08A-UI-07096-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits paid to the claimant.

ISSUE:

Whether Mr. Osmanovic's appeal from the June 25, 2008, reference 03, decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 20, 2008, Workforce Development mailed Safet Osmanovic a copy of the reference 02 decision that denied benefits effective April 13, 2008 in connection with a failure to report as directed. The decision was mailed to Mr. Osmanovic's last-known address of record, which is the residence where Mr. Osmanovic still resides with his family. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 30, 2008. The greater weight of the evidence indicates that the decision was received at Mr. Osmanovic's residence in a timely fashion, prior to the deadline for appeal.

On June 25, 2008, Workforce Development mailed Mr. Osmanovic a copy of the reference 03 decision that he was overpaid \$1,842.00 for six weeks between April 13, 2008 and May 24, 2008. The reference 03 decision was directed to Mr. Osmanovic's last-known address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 5, 2008. Because that date was a Saturday, the deadline was extended by operation of law to Monday, July 7, 2008. The greater weight of the evidence indicates that the decision was received at Mr. Osmanovic's residence in a timely fashion, prior

to the deadline for appeal. The greater weight of the evidence indicates that Mr. Osmanovic had obtained new employment and, therefore, did not take any steps to respond to either decision.

On June 5, 2008, Workforce Development mailed an Unemployment Insurance Notice to Report to Mr. Osmanovic's last-known address of record. The Notice to Report directed Mr. Osmanovic to be available for a telephone interview on June 18, 2008 between 1:30 and 2:30 p.m.

On July 19, 2008, Mr. Osmanovic received a billing statement from Workforce Development regarding the \$1,842.00 overpayment. The billing statement indicated that Workforce Development would take additional legal steps to collect the overpayment if Mr. Osmanovic did not take appropriate action to repay the benefits.

On August 4, 2008, Ms. Osmanovic went to the Des Moines Workforce Development Center, obtained an appeal form and submitted an appeal to the Workforce Development Center staff. The Appeals Section received Mr. Osmanovic's appeal form on August 5, 2008. Mr. Osmanovic's appeal was in response to the demand letter he had received on July 19, 2008.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge listened carefully to Mr. Osmanovic's testimony. The administrative law judge concludes that Mr. Osmanovic's testimony regarding when he received the reference 02 decision, the reference 03 decision, and the Notice to Report is not credible. The evidence indicates that Workforce Development had the correct address of record for Mr. Osmanovic. During the hearing, Mr. Osmanovic made various assertions about delivery of the Workforce Development correspondence. One assertion was that someone was stealing his mail. Another assertion was that the post office was consistently misdirecting his mail to other house numbers. Mr. Osmanovic asserted that not one of three separate documents sent to his residence at various times during the month of June made it to his residence. The administrative law judge concludes that such a scenario is extremely unlikely. The greater weight of the evidence indicates that Mr. Osmanovic received the reference 02 and reference 03 decisions in a timely fashion, but did not bother to take any steps to respond to the decisions until he received a demand letter on July 19 that indicated Workforce Development would take further action to collect the overpayment amount. Even then, the weight of the evidence indicates that Mr. Osmanovic waited more than two weeks to go to Workforce Development to file an appeal. The greater weight of the evidence in the record indicates that Mr. Osmanovic did not take timely steps to file an appeal from the reference 02 or the reference 03 decisions because he had obtained new employment.

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 date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

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. See 871 IAC 24.35(1)(b). In this case, Mr. Osmanovic filed his appeal on August 4, 2008, when he delivered the appeal form to the Des Moines Workforce Development Center staff.

The evidence in the record establishes that more than ten calendar days elapsed between the date the reference 03 decision was mailed to Mr. Osmanovic 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. 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 weight of the evidence in the record leads to the conclusion that Mr. Osmanovic did have a reasonable opportunity to file a timely appeal from the June 25, 2008, reference 03, decision. The hearing record reflects that Mr. Osmanovic possessed sufficient English skills to file a timely appeal and/or to obtain assistance in filing a timely appeal.

The administrative law judge concludes that 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. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 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. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The Agency representative's June 25, 2008, reference 03, overpayment decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css