

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**GABRIELLE M SCHERRER**  
Claimant

**APPEAL NO. 21A-UI-01447-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 04/05/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant, Gabrielle Scherrer, filed a late appeal from the October 27, 2020, reference 04, decision that held she was overpaid \$3,384.00 in regular benefits for eight weeks between April 5, 2020 and May 30, 2020, based on a June 4, 2020 decision that denied benefits in connection with an able and available determination. After due notice was issued, a hearing was held on February 18, 2021. The claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-01446-JTT. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the June 3, 2020 fact-finding interview record, the June 4, 2020, reference 03, 2020 decision and the October 27, 2020, reference 04, overpayment decision.

**ISSUE:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 4, 2020, Iowa Workforce Development mailed the June 4, 2020, reference 03, decision to the claimant's Cedar Rapids last-known address of record. The claimant received the decision in a timely manner, prior to the deadline for appeal. The reference 03 decision denied benefits effective April 5, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed and was not available for work within the meaning of the law. The reference 03 decision stated that the decision would become final unless an appeal was postmarked by June 14, 2020 or was received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. June 14, 2020 was a Sunday and the next working day was Monday, June 15, 2020. The claimant did not take steps to file an appeal by the extended appeal deadline or at any point prior to December 14, 2020.

On October 27, 2020, IWD mailed the October 27, 2020, reference 04, decision to the claimant's last-known address of record. The claimant received the decision in a timely manner,

prior to the applicable appeal deadline. The reference 04 decision held that the claimant was overpaid \$3,384.00 in regular benefits for eight weeks between April 5, 2020 and May 30, 2020, based on the June 4, 2020 decision that denied benefits in connection with the able and available determination. The reference 4 decision stated that it would become final unless an appeal was postmarked by November 6, 2020 or was received by the Appeal Section by that date. The claimant was late in a pregnancy at the time she received the reference 04 overpayment decision. The claimant's anticipated delivery date was November 4, 2020. The claimant did not take reasonable and timely steps to appeal from the reference 04 decision prior to giving birth on November 5, 2020. The November 6, 2020 appeal dealing passed while the claimant and her baby were in the hospital following delivery. The birth was non-Caesarian. The claimant and her baby were discharged from the hospital to home on November 8, 2020. The claimant then waited more than a month to take further action on her appeal from the October 27, 2020, reference 04, decision. On December 14, 2020, the claimant completed an online appeal from the October 27, 2020, reference 04 decision. The claimant referenced her receipt of the June 4, 2020 decision and provided June 4, 2020 as the date she received the earlier decision. The Appeals Bureau received the Appeal on December 14, 2020 and treated it as an appeal from both decisions.

## **REASONING AND CONCLUSIONS OF LAW:**

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, subsections 10 and 11, 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 mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. 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). One 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). No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The claimant's appeal from the October 27, 2020, reference 04, decision was untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal prior to her baby's November 4, 2020 due date, but did not take reasonable and timely steps to file an appeal prior to delivering her child on November 5, 2020. Because the claimant did not have use of the full appeal period due to delivering her baby on November 5, 2020 and the hospitalization that continued to November 8, 2020, the evidence established good cause for not filing the appeal by the November 6, 2020 appeal deadline. However, the evidence establishes subsequent unreasonable delay, based on the claimant waiting more than a month after the appeal deadline and more than a month after the birth of her child to finally get around to filing an appeal on December 14, 2020. The unreasonably delayed late filing of the appeal was attributable to the claimant and not attributable to IWD or to the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the June 4, 2020, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the October 27, 2020, reference 04, decision was untimely. The decision that held the claimant was overpaid \$3,384.00 in regular benefits for eight weeks between April 5, 2020 and May 30, 2020, based on a June 4, 2020 decision that denied benefits in connection with an able and available determination, remains in effect.



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James E. Timberland  
Administrative Law Judge

March 1, 2021  
Decision Dated and Mailed

jet/lj

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**