



Section 486 IAC 3.1(2) of the Iowa Administrative Code provides:

Form and time of appeal. A party aggrieved by a decision of the administrative law judge may appeal to the Employment Appeal Board within 15 days from the date of the decision. The appeal shall state the grounds for appeal. The appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319. The appeal may also be filed at any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal is filed by fax, the original copy shall be mailed to the employment appeal board. The date of the appeal is the date of the fax transmission.

According to 871 IAC 24.35(1), if a United States Postal Service postmark is present that postmark will be used as the filing date of the appeal. If there is no postmark, a postal meter mark will be used to establish the filing date. If neither is available the date of the appeal is the date the appeal was written.

This rule has been construed in Pepsi Cola v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). The court stated that the United States Postal Service postmark is governing when both a meter mark and postmark are present on the envelope.

The Claimant did not file a timely appeal to the Employment Appeal Board. The Employment Appeal Board is without jurisdiction to review the merits of the case. Franklin v. Iowa Department of Job Service, 277 N.W.2d 877 (Iowa 1979).

The Employment Appeal Board rule at 486 IAC 3.1(16) provides a late appeal shall be dismissed unless good cause for the delay in filing is shown. Good cause was not shown in this case.

#### **DECISION:**

The Employment Appeal Board lacks jurisdiction to rule on the merits of the appeal. The administrative law judge's decision dated January 13, 2022, which denied benefits, is final.

The Board cannot waive the overpayment in the case before us, because there was no hearing, and there must be evidence for us to waive the federal LWA overpayment. “[W]aiver determinations must be made on the facts and circumstance of each individual claim, blanket waivers are not permissible.” UIPL 15-20, Change 1, Attachment I, p. I-3 (DOL ETA May 9, 2020). However, the Claimant may still request a waiver of his LWA overpayment from Iowa Workforce Development. Instructions for requesting a waiver of this

overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. The Claimant should then carefully read and follow all instructions from Iowa Workforce on how to apply for waiver of LWA, what information to supply, and how to appeal if necessary.

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