

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TED CIEMINSKI
Claimant

APPEAL 17A-UI-04654-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 04/23/06
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 421.17(27) – State Income Tax Refund Offset Authority
Iowa Code § 8A.504 – Setoff Procedures (IDAS)
Iowa Code § 96.11(16) – Reimbursement of Setoff Costs
Iowa Admin. Code r. 871-25.16 – State Income Tax Refund Offset
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Ted Cieminski (claimant) filed an appeal from the February 16, 2017, reference 02, unemployment insurance decision that gave notice that his 2016 Iowa income tax refund was going to be withheld to reduce an overpayment of unemployment insurance benefits, which the claimant owed to Iowa Workforce Development (IWD). After due notice was issued, a hearing was held by telephone conference call on May 19, 2017. The claimant participated and was represented by Attorney Jeffrey L. Walters. Claimant's Exhibits A through D were received. Department's Exhibits D1 through D4 were received.

ISSUE:

Is the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance decision notifying the claimant that his state income tax refund was being withheld to reduce his overpayment was mailed to his last known address of record on February 16, 2017. He received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 26, 2017.

The appeal was not filed until May 2, 2017, because the claimant did not read that part of the decision and did not know there was a 10-day time limit to file an appeal. The claimant also testified he has post-traumatic stress disorder (PTSD) due to a work-related injury which impairs his memory and affected his ability to file a timely appeal. He argued he is not a lawyer so he becomes confused by legal documents. The claimant did not reach out to IWD or anyone else

upon receiving his unemployment insurance decision for further clarification or assistance. He did not reach out to his attorney until the beginning of May 2017.

The claimant had a work-related injury in 2005. During 2006, he filed for and received unemployment insurance benefits. In 2007, he settled his Workers' Compensation claim and the employer reported the settlement to IWD. This prompted an audit by a member of IWD's Investigations & Recovery unit. On October 3, 2008, IWD mailed an unemployment insurance decision notifying the claimant of an overpayment related to his 2006 claim for benefits. The claimant had knowledge of that decision at some point at the end of 2008. The claimant did not appeal that decision until April 15, 2011. The administrative law judge from Department of Inspections and Appeals issued a decision on August 3, 2011, finding the claimant's appeal untimely stating that the unemployment insurance decision had become final agency action. The claimant did not appeal that decision to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code § 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 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 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 claimant's argument that he does not understand the unemployment insurance decisions because he is not a lawyer is not persuasive as most of the recipients of unemployment insurance decisions do not have legal training. Additionally, he has received these decisions in the past and was aware of some deadline for filing an appeal based on his previous experience, but did not reach out to IWD or anyone else to help him with comprehending the decision or appeal deadline. While the claimant has a diagnosis of PTSD from his 2005 injury, he has not presented any documentation or information to indicate he was medically incapacitated to the point that he was physically unable to file a timely appeal to the unemployment insurance decision.

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). Even if the administrative law judge did have jurisdiction to make a decision on this appeal, the only decision she would be able to address would be that of whether the claimant's state income tax can be withheld to reduce his overpayment. She would not have jurisdiction on the underlying overpayment issue as that has become final agency action.

DECISION:

The February 16, 2017, 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

Decision Dated and Mailed

src/rvs