

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL J BECK
Claimant

APPEAL NO. 15A-UI-10225-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/31/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Samuel Beck filed an appeal from the August 26, 2015, reference 08, decision that held he was overpaid \$416.00 in benefits for the week that ended July 18, 2015, based on an earlier decision that denied benefits for that week. After due notice was issued, a hearing was held on September 29, 2015. Mr. Beck participated. The hearing in this matter was consolidated with the hearing in Appeal Numbers 15A-UI-10224-JTT, 15A-UI-10226-JTT, and 15A-UI-10227-JTT. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether Mr. Beck's appeal from the August 26, 2015, reference 08, decision was timely. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 21, 2015, Iowa Workforce Development mailed a copy of the August 21, 2015, reference 04, decision to Samuel Beck's last-known address of record. The decision denied benefits for the week that ended July 18, 2015, based on an Agency conclusion that Mr. Beck did not make an adequate work search for that week and had previously been warned about the work search requirement. The decision contained a warning that an appeal from the decision must be postmarked by August 31, 2015 or received by the Appeals Section by that date. Mr. Beck received the decision in a timely manner, prior to the deadline for appeal. Mr. Beck read partially through the decision and then discarded the decision. Mr. Beck took no steps to file an appeal by the appeal deadline.

On August 26, 2015, Iowa Workforce Development mailed a copy of the August 26, 2015, reference 08, decision to Mr. Beck's same last-known address of record. The reference 08 decision held that Mr. Beck had been overpaid \$416.00 in benefits for the week that ended July 18, 2015, based on the earlier decision that denied benefits for that week. The decision contained a warning that an appeal from the decision must be postmarked by September 5, 2015 or received by the Appeals Section by that date. The decision also indicated that if the

appeal deadline fell on a Saturday, Sunday, or legal holiday, the deadline would be extended to the next working day. September 5, 2015 was a Saturday. Due to the Labor Day holiday, the next working day was Tuesday, September 8, 2015. Mr. Beck received the decision in a timely manner, prior to the deadline for appeal. Mr. Beck did not read the reference 08 overpayment decision and instead discarded it. Mr. Beck did not take any steps to file an appeal by the appeal deadline.

On September 2, 2015, Iowa Workforce Development mailed a copy of the September 2, 2015, reference 07, decision to Mr. Beck at his last-known address of record. The decision denied benefits for the week that ended August 1, 2015, based on an Agency conclusion that Mr. Beck did not make an adequate work search for that week and had previously been warned about the work search requirement. The decision contained a September 12, 2015 deadline for appeal.

On September 11, 2015, Mr. Beck drafted an appeal memo. In the appeal memo, Mr. Beck indicated that he was appealing from the August 26, 2015, reference 08, decision. Mr. Beck attached the September 2, 2015, reference 07, decision to the appeal memo and faxed the two pages, along with a fax cover sheet, to the Appeals Section. Mr. Beck dated the fax cover sheet September 11, 2015. The Appeals Section received the appeal on September 11, 2015 and file-stamped it received on that date. The Appeals Section treated the appeal as an appeal from the three decisions referenced above and also from the September 9, 2015, reference 09, overpayment decision that was mailed to Mr. Beck on September 9, 2015.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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 871 AC 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 871 IAC 24.35(1)(b).

Mr. Beck's appeal from all four decisions was filed on September 11, 2015, the date that the Appeals Section received his faxed appeal.

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). 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal from the August 26, 2015, reference 08, decision that held he was overpaid \$416.00 in benefits for the week that ended July 18, 2015. Mr. Beck elected not to take action in response to the decision by the extended September 8, 2015 deadline. Mr. Beck later changed his mind and filed a late appeal on September 11, 2015.

Because the late filing of the appeal was attributable to Mr. Beck's decision not to file an appeal by the deadline, and was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the August 26, 2015, reference 08, decision that held Mr. Beck was overpaid \$416.00 in benefits for the week that ended July 18, 2015. 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 August 26, 2015, reference 08, decision was untimely. The decision that held the claimant was overpaid \$416.00 in benefits for the week that ended July 18, 2015, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css