

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH (SIMMEN) LIZER
Claimant

APPEAL 17A-UI-03603-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/23/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 16, 2017, (reference 05) decision that gave notice that claimant's 2017 Iowa income tax refund was going to be withheld to apply to an overpayment of unemployment insurance benefits, which the claimant owed to Iowa Workforce Development. After due notice was issued, a hearing was held by telephone conference call on May 11, 2017. The claimant participated. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Did the claimant file a timely appeal?

Can the agency withhold the claimant's state income tax refund to offset a prior overpayment of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on February 16, 2017. She did receive 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 March 31, 2017, which is after the date noticed on the decision. The claimant testified she filed her appeal by fax on February 21, 2017. In her appeal letter she indicated she filed her appeal via fax on February 23, 2017. She produced no fax confirmation sheet showing the date she faxed her appeal to and the telephone number she faxed the appeal to.

The claimant testified she called the customer service line on March 9 or 10 when she had not heard anything from the agency about her appeal. At that time she said she was told her appeal had not been received. The claimant testified she filed a duplicate appeal in the next day or two. The claimant's appeal is dated March 31, 2017, three weeks after she said she had spoken to someone in the customer service center. The claimant did not file a timely appeal.

Having reviewed the administrative record, the administrative law judge finds: The claimant was overpaid unemployment insurance benefits in two separate cases one from 2014 and one from 2015. She did not appeal either decision and they have both now become final. The state treasurer has notified the Iowa Workforce Development Department that the claimant has an Iowa income tax refund for 2017 of at least \$50.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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. 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. The claimant's testimony when compared with the information in her appeal letter and the date of her appeal letter persuades the administrative law judge that the claimant did not file 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 pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In the event that a higher authority should determine the claimant's appeal to be timely, the administrative law judge concludes that the withholding of the Iowa income tax refund to recover the prior overpayment is valid.

Iowa Code § 421.17(27) via the Iowa Department of Revenue sets forth a procedure whereby one state agency may obtain funds owed by a second state agency to an individual to apply to a debt, which that same individual owes to the first state agency. 871 IAC 25.16 specifically authorizes the Iowa Workforce Development Department to withhold the state income tax refund owing to the claimant to apply to an overpayment of benefits which that same claimant owes to the Iowa Workforce Development Department so long as both amounts are at least \$50.00. Iowa Code § 96.11(16) allows reimbursement of setoff costs. The claimant owes the Iowa Workforce Development Department \$625.00 in benefits she received in 2014 and 2015 to which she was not entitled and she has an Iowa income tax refund of at least \$50.00. Therefore, the Iowa Workforce Development Department is legally authorized to withhold that Iowa income tax refund up to the amount of the overpayment of benefits, plus a \$7.00 transfer fee, which the claimant owes to the Iowa Workforce Development Department.

DECISION:

The representative's decision dated February 16, 2017, (reference 05) is affirmed. The claimant did not file a timely appeal. The Iowa Workforce Development Department has legal authority to withhold the Iowa income tax refund owed to the claimant to apply to the overpayment of benefits, which that individual owes to the Iowa Workforce Development Department.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs