

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HILLARY A PRESTON
Claimant

APPEAL NO. 22A-UI-02091-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant, Hillary Preston, filed a late appeal from the October 26, 2021, reference 02, decision that held she was overpaid \$7,215.00 for 15 weeks between March 22, 2020 and July 4, 2020, due to a June 10, 2021 (reference 01) decision that disqualified the claimant for benefits in connection with a determination that she was not available for work. After due notice was issued, a hearing was held on February 15, 2022. Claimant participated. There were three matters set for a consolidated hearing: 22A-UI-02090-JT-T, 22A-UI-02091-JT-T, and 22A-UI-02092-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01, 02 and 03 decisions, the fact-finding questionnaires pertaining to the reference 01 fact-finding interview, DBRO, KCCO, KPYX, THE March 22, 2020 monetary determination (green paper), the May 14, 2020 notice/decision regarding FPUC.

ISSUE:

Whether there is good cause to deem the late appeal from the October 26, 2021, reference 02, decision timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Hillary Preston, established an original claim for benefits that was effective March 22, 2020. At that time, the claimant provided an address in Diagonal, Iowa as the address to which correspondence should be directed to her. The claimant did not update the address of record until December 27, 2021, when she filed an appeal in response to receiving two overpayment decisions. At that time, the claimant provided a street address and post box in Clearfield, Iowa as her mailing address. The claimant had not updated her address of record with Iowa Workforce Development because she deemed the unemployment insurance matter pertaining to her receipt of benefits for the period of March 22, 2020 through July 4, 2020 to be a “done deal.” The claimant had started to reside in Clearfield, Iowa during the first week of

June 2021. The claimant advises that she completed a mail forwarding request with the United States Postal Service within a couple weeks of moving to Clearfield.

On June 10, 2021, Iowa Workforce Development Benefits Bureau issued a reference 01 decision that denied benefits effective June 14, 2020, based on the deputy's conclusion that the claimant had unduly limited her availability for work with her employer, Bunn-O-Matic, due to a lack of childcare. The reference 01 decision has been affirmed in Appeal Number 22A-UI-02090-JT-T due to an untimely appeal in that matter. The reference 01 decision remains in effect.

On October 26, 2021, Iowa Workforce Development mailed two overpayment decisions to the claimant. The decisions were directed to the address of record in Diagonal. The claimant received the overpayment decisions in a timely manner, prior to the deadline for appeal. The reference 02 decision held the claimant was overpaid \$7,215.00 in regular benefits for 15 weeks between March 22, 2020 and July 4, 2020, due to the June 10, 2021 decision that disqualified the claimant for benefits in connection with the determination that the claimant was not available for work. The reference 03 decision held the claimant was overpaid \$8,400.00 in Federal Pandemic Unemployment Compensation (FPUC) for 14 weeks between March 29, 2020 and July 4, 2020, due to the determination, in the other overpayment decision, that the claimant was ineligible for benefits for the period in question. Each overpayment decision used an erroneous start date for the overpayment period. Instead of starting with the June 14, 2020 date provided in the reference 01 decision, the reference 02 and reference 03 decisions erroneously used March 22, 2020 as the start date of the overpayment period, which resulted in erroneous overstatements of the overpayment amounts.

The reference 02 and 03 decisions each stated that the decision would become final unless an appeal was postmarked by November 4, 2021 or was received by the Appeals Bureau by that date. Each decision included clear and concise instructions for filing an appeal. The claimant did not review the appeal instructions on the back of the decisions.

The claimant did not file an appeal from either overpayment decision by the November 4, 2021 appeal deadline or at any time prior to December 27, 2021. Though the claimant asserts she was unable to reach anyone at Iowa Workforce Development until December 27, 2021, the assertion is baseless.

On December 27, 2021, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal on December 27, 2021 and treated it as an appeal from both overpayment decisions and the earlier decision that disqualified the claimant for benefits for the period beginning June 14, 2020.

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 evidence in the record establishes an untimely appeal. The evidence establishes that the claimant received the reference 02 overpayment decision in a timely manner, had a reasonable

opportunity to file an appeal by the November 4, 2021 appeal deadline, but unreasonably delayed filing the appeal to December 27, 2021. The late filing of the appeal was not attributable to the Iowa 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 Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the decision from which the claimant appeals in the present matter. 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 26, 2021, reference 02, decision was untimely. Because the administrative law judge lacks jurisdiction to modify the reference 02 decision, the decision that held the claimant was overpaid \$7,215.00 for 15 weeks between March 22, 2020 and July 4, 2020, due to a June 10, 2021 (reference 01) decision that disqualified the claimant for benefits in connection with a determination that she was not available for work, remains in effect.

This matter is **remanded** to the Benefits Bureau for further review of the reference 02 decision and entry of a corrected overpayment decision that sets forth a corrected overpayment period and corrected overpayment amount.



James E. Timberland
Administrative Law Judge

March 10, 2022

Decision Dated and Mailed

jet/abd