

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JASEN E MCGEE
Claimant

APPEAL NO. 19A-UI-09740-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

OC: 02/03/19
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.5(8) and 96.14(4) – Fraud-based Overpayment & Penalty

STATEMENT OF THE CASE:

Jasen McGee filed a late appeal from the September 10, 2019, reference 06, decision that held he was overpaid \$521.00 for two weeks between May 26, 2019 and June 8, 2019, based on his incorrect reporting of wages earned from Kleiman Construction, Inc. The decision also imposed a 15 percent penalty, based on the investigator's conclusion that Mr. McGee had intentionally misrepresented his wages. After due notice was issued, a hearing was held on January 28, 2020. Mr. McGee participated. Kasandra Ellenwood, Investigator II, appeared on behalf of the Iowa Workforce Development Investigations & Recovery Bureau. Exhibits 1 and B were received into evidence.

ISSUE:

Whether Mr. McGee's appeal from the September 10, 2019, reference 06, overpayment decision was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 10, 2019, Iowa Workforce Development mailed the reference 06 (original claimant date February 3, 2019) decision to claimant Jasen McGee at his last known address of record. The decision held that Mr. McGee was overpaid \$521.00 for two weeks between May 26, 2019 and June 8, 2019, based on his incorrect reporting of wages earned from Kleiman Construction, Inc. The decision also imposed a 15 percent penalty, based on the investigator's conclusion that Mr. McGee had intentionally misrepresented his wages. The decision stated that an appeal from the decision must be postmarked by September 20, 2019 or be received by the Appeals Bureau by that date. Mr. McGee received the decision in a timely manner, prior to the appeal deadline. Mr. McGee did not take any steps to appeal the decision by the appeal deadline. On December 9, 2019, Mr. McGee completed an online appeal from the September 10, 2019, reference 06, decision. The Appeals Bureau received the appeal on December 9, 2019.

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).

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 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 evidence in the record establishes an untimely appeal. Mr. McGee had a reasonable opportunity to file a timely appeal by the September 20, 2019 appeal deadline, but unreasonably elected not to file an appeal until almost three months after the appeal deadline had passed. The late filing of the appeal was attributable to Mr. McGee's delayed response and was not attributable to Iowa Workforce Development or the United States Postal Service. Accordingly, 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, the administrative law judge lacks jurisdiction to hear an appeal from the overpayment and penalty determination or to disturb the September 10, 2019, reference 06, overpayment decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The September 10, 2019, reference 06, decision is affirmed. The claimant's appeal was untimely. The decision that held the claimant was overpaid \$521.00 for two weeks between May 26, 2019 and June 8, 2019, based on his incorrect reporting of wages earned from Kleiman Construction, Inc., and that imposed a 15 percent penalty, based on the investigator's conclusion that the claimant intentionally misrepresented his wages, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn