

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEX J FENZEL
Claimant

APPEAL NO. 13A-UI-11928-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/02/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 3, 2013, reference 05, decision that he was overpaid \$3,324.00 for 12 weeks between September 2, 2012 and November 24, 2012. After due notice was issued, a hearing was held on November 15, 2013. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-11927-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Department Exhibits D-1, D-2 and D-3 into evidence.

ISSUES:

Whether there is good cause to treat the appeal as timely.

Whether the claimant was overpaid \$3,324.00 for 12 weeks between September 2, 2012 and November 24, 2012.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Alex Fenzel established an original claim for benefits that was effective September 2, 2012 and received \$3,324.00 in benefits for the period of September 2, 2012 through November 24, 2012.

On October 8, 2012, an Iowa Workforce Development representative entered an October 8, 2012, reference 01, decision that disqualified claimant Alex Fenzel for benefits in connection with a January 14, 2012 separation from the City of Clinton. Mr. Fenzel received the decision in a timely manner, but took no steps to appeal the decision prior to the October 18, 2012 deadline for appeal. The October 8, 2012, reference 01, decision has been affirmed on appeal due to the untimeliness of the appeal from that decision. See Appeal Number 13A-UI-11927-JTT.

On July 3, 2013, Iowa Workforce Development mailed a copy of a July 3, 2013, reference 05, overpayment decision to Mr. Fenzel at his last-known address of record. Mr. Fenzel had moved in May 2013 to a new address. While Mr. Fenzel had not updated his address with Iowa

Workforce Development, he had updated his address with the United States Postal Service. The overpayment decision contained a warning that an appeal must be postmarked by July 13, 2013 or received by the Appeals Section by that date. Mr. Fenzel did not receive the overpayment decision until October 10, 2013. Mr. Fenzel mailed his appeal to the Appeals Section in an envelope that bears an October 21, 2013 postmark. Ten days from October 10, 2013, would have been Sunday, October 20, 2013.

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, 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-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. Fenzel's appeal was filed on October 21, 2013, as indicated by the postmark on the envelope in which the appeal was submitted.

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 not have a reasonable opportunity to file a timely appeal from the July 3, 2013, reference 05, decision that denied benefits, because he did not receive the decision until October 10, 2013. After receiving the decision, the claimant filed an appeal on Monday, October 21, 2013. The 10th day after Mr. Fenzel received the decision would have been Sunday, October 20, 2013. The administrative law judge concludes there is good cause to treat the October 21, 2013 appeal from the July 3, 2013, reference 05, decision as a timely appeal.

Iowa Code section 96.3 (7) provides that if a claimant receives benefits and is later deemed ineligible for those benefits, the claimant is required to repay the benefits even if the benefits were received through no fault of the claimant. The October 8, 2012, reference 01 disqualification decision has been affirmed on appeal, based on the claimant's untimely appeal from that decision. Based on that disqualification decision, the claimant was ineligible for the \$3,324.00 in benefits that he received for the period of September 2, 2012 through November 24, 2012. Accordingly, those benefits constituted an overpayment of benefits. The claimant is required to repay the benefits to Iowa Workforce Development.

DECISION:

The Agency representative's July 3, 2013, reference 05, decision is affirmed. The claimant was overpaid \$3,324.00 for 12 weeks between September 2, 2012 and November 24, 2012. The claimant must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs