

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLI E OWENS
Claimant

APPEAL 18A-UI-08451-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/20/15
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

The claimant/appellant, Kelli E. Owens, filed an appeal from the May 27, 2016, (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid unemployment insurance benefits because she failed to accurately report earnings from Opportunity Village between December 20, 2015 and March 26, 2016. IWD also imposed a 15% administrative penalty due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on September 4, 2018 with Administrative Law Judge, Jennifer L. Beckman. The hearing was held jointly with Appeals 18A-UI-08455-JC-T and 18A-UI-08453-JC-T. The claimant, Kelli E. Owens, participated personally. Kevan Irvine, Program Coordinator, participated on behalf of IWD. IWD Exhibits 1-7 were admitted, and Claimant Exhibits A-C were also admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?
Did IWD correctly determine that the claimant was overpaid unemployment insurance benefits, and was the overpayment amount correctly calculated?
Did IWD properly impose a penalty based upon the claimant’s misrepresentation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of December 20, 2015. A notice of fact-finding interview was mailed to the claimant on May 13, 2016 to report for an interview related to an audit (Department Exhibit 2-5). The claimant denied receipt of the notice and did not appear for the fact-finding interview on May 19, 2016

(Department Exhibit 2-5). An initial unemployment insurance decision (Reference 05) resulting in an overpayment of benefits and administrative penalty was mailed to the claimant's last known address of record on May 27, 2016. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 6, 2016.

The address used to mail the initial decision was:
355 East 12th Street, Apartment #2
Garner, Iowa 50438

This was a valid mailing address for the claimant until September, 2017. The claimant denied receipt of the overpayment decision (Department Exhibit 3-1) or subsequent overpayment statements mailed on June 16, 2016 (Department Exhibit 6-1), October 18, 2016 (Department Exhibit 6-2) and January 17, 2017 (Department Exhibit 6-3). The claimant made several payments towards her overpayment August 8, 2016 through February 13, 2017 (Department Exhibit 1-1).

The claimant stated she did not recall receiving the initial decision with the overpayment and penalty but that she attempted to appeal it. She thought she appealed it via email but had no other details available. On August 7, 2018, the claimant mailed an appeal to the Appeals Bureau, which was received as her first and only appeal to this decision (Claimant Exhibit A, Department Exhibit 7).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

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 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).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). The postage meter mark on the last day for filing does not perfect a timely appeal if the postmark affixed by the United States Postal Service is beyond the filing date. *Pepsi-Cola Bottling Company of Cedar Rapids v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge is not persuaded the claimant attempted to timely appeal the initial decision based upon the lack of information and vagueness of evidence presented. If the claimant had in fact attempted to file an appeal before the due date, she did not follow up with the Appeals Bureau to inquire about receipt of it or next steps in the process.

Even if the claimant did not receive the May 13, 2016 notice of fact-finding interview (which led to the issuance of the overpayment and penalty) or the initial decision dated May 27, 2016, it is apparent from the evidence that the claimant was aware of the overpayment on August 8, 2016, when she made the first payment towards repaying the overpayment (Department Exhibit D-1). She delayed filing her appeal thereafter for approximately two years (Claimant Exhibit A, Department Exhibit 7).

Therefore, based on the evidence presented, the administrative law judge concludes that the claimant's 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 Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The May 27, 2016, (reference 05) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect: The claimant was overpaid benefits. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn