

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

KELLEY J FERGUSON
Claimant

APPEAL NO. 23A-UI-02092-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 06/07/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

On February 27, 2023, Kelley Ferguson (claimant) filed a late appeal from the January 27, 2022 (reference 03) decision held the claimant was overpaid \$438.00 in regular state benefits for the two weeks between June 7, 2020 and June 20, 2020, due to an earlier disqualification decision. After due notice was issued, a hearing was held on March 16, 2023. Claimant participated. There were four appeal numbers set for a consolidated hearing: 23A-UI-02090-JT-T, 23A-UI-02092-JT-T, 23A-UI-02093-JT-T, and 23A-UI-02094-JT-T. Exhibit A, the online appeal, and Exhibit 1, an October 23, 2020 paystub, were received into evidence at the time of the hearing. The administrative law judge took official notice of the Iowa Workforce Development administrative records labeled D-1 through D-16. The administrative law judge left the hearing record open for the limited purpose of allowing the employer in the companion appeal and the claimant the opportunity to submit employment records relevant to the period beginning June 7, 2020. The employer submitted four pages that were received into evidence as Exhibit 2. The claimant did not present records as requested, but instead submitted a brief written statement, which was received into evidence as Exhibit B.

ISSUE:

Whether the appeal 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:

Kelley Ferguson (claimant) established an original claim for benefits that was effective June 7, 2020. Iowa Workforce Development set the weekly benefit amount at \$492.00. The claimant's base period for purposes of the claim consisted of the four quarters of 2019. The claimant's primary base period employer was Board Feet, Inc. The claimant continued to be employed by Board Feet, Inc. as a full-time bookkeeper during the time her unemployment insurance claim remained active. The claimant's hourly wage during the relevant period was \$16.00. The claimant regular work hours were 8:00 a.m. to 4:00 p.m., Monday through Friday. Paula Smith, Office Manager, was the claimant's supervisor.

The claimant made weekly claims for the week ending June 13 and June 20, 2020 and then discontinued the claim. For the week ending June 13, 2020, the claimant reported she earned \$408.00 in wages. For that week, the claimant reported \$408.00 in earned wages and was paid \$207.00 in regular state unemployment insurance benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits. For the week that ended June 20, 2020, the claimant reported \$384.00 in earned wages and was paid \$231.00 in regular state benefits and \$600.00 in FPUC benefits. The benefits were paid to a debit card that was issued to the claimant in connection with the claim. The claimant asserts she did not receive a debit card and, therefore, that she did not receive the unemployment insurance benefits disbursed to the debit card.

The employer's payroll records reflect that the claimant worked 26.67 hours during the week that ended June 13, 2020, for which the employer paid the claimant \$426.72. During that week, the claimant worked Monday through Thursday, but was absent on Friday.

The employer's payroll records reflect that the claimant worked 24.25 hours during the week that ended June 20, 2020, for which the employer paid the claimant \$388.00. During that week the claimant was absent on Monday and Tuesday, but worked Wednesday through Friday.

The employer at all relevant times had full-time work available for the claimant.

During the period in question, the employer offered special compensation to employees who were absent due to COVID-19. The employer did not provide COVID-19 pay to the claimant for the two weeks in question. The claimant's absence during those two weeks was not COVID-19 related. Neither party recalls the particulars of why the claimant was absent during a portion of the week ending June 13 and June 20, 2020.

On March 19, 2021, Iowa Workforce Development mailed the March 19, 2021 (reference 02) decision to the Spirit Lake, Iowa address of record the claimant provided IWD at the time she established the claim for benefits. The claimant continued to live at the Spirit Lake address until sometime in early 2021, but did not update her address of record with Iowa Workforce Development. Though the claimant asserts she completed a forwarding request with the United States Postal Service, later mailed returned by the USPS rebuts that assertion. The claimant does not recall receiving the reference 02 decision. The reference 02 decision denied benefits for the period beginning June 7, 2020, based on the deputy's conclusion the claimant was still employed with Board Feet, Inc. for the same hours and wages as in the original contract of hire and could not be considered partially unemployed within the meaning of the law. The reference 02 decision included a March 29, 2021 deadline for appeal, along with instructions for filing an appeal. The claimant did not file an appeal from the reference 02 decision by the March 29, 2021 appeal deadline.

On January 27, 2022, Iowa Workforce Development mailed two overpayment decisions to the claimant's Spirit Lake address of record. The reference 03 decision held the claimant was overpaid \$438.00 in regular state benefits for the two weeks between June 7, 2020 and June 20, 2020, due to the earlier disqualification decision. The reference 04 decision held the claimant was overpaid \$1,200.00 in Federal Pandemic Unemployment Compensation (FPUC) for the same two weeks for the same reason. Both decision included a February 6, 2022 deadline for appeal and appeal instructions. The claimant did not file an appeal from either decision by the February 6, 2022 appeal deadline. The claimant did not receive either overpayment decision when they were mailed to her. The claimant had still not updated her address of record with IWD and had not completed as USPS forwarding request.

On April 14, 2022, IWD mailed an Overpayment Statement to the claimant's Spirit Lake address of record. On April 26, 2022, the USPS returned the correspondence with a note the claimant had moved without providing a forwarding address and the USPS was unable to forward the correspondence. In October 2022, IWD mailed additional correspondence to the claimant that was returned by the USPS for the same reasons.

On February 16, 2023, IWD mailed a reference 05 decision to the claimant. The reference 05 decision stated that IWD was withholding the claimant's Iowa income tax refund to offset it against an outstanding overpayment of unemployment insurance benefits and a \$7.00 administrative transfer fee. IWD appears to have obtained the claimant's updated Spencer address from the Iowa Department of Revenue in connection with the claimant filing her Iowa income tax return. The tax offset decision included a February 26, 2023 deadline for appeal.

On February 27, 2023, the claimant completed and transmitted an online appeal from the reference 05 tax offset decision. The Appeals Bureau received the appeal on February 27, 2023 and treated it as an appeal from all of the adverse decisions mentioned hereinabove.

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 from the January 27, 2022 (reference 03) decision. The evidence establishes that the decision was mailed to the address of record in a timely manner, but that the claimant had unreasonably not provided an updated address to Iowa Workforce Development or to the United States Postal Service and this caused the appeal to be unreasonably delayed to February 27, 2023. 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, the administrative law judge lacks jurisdiction to disturb the decision from which the appellant 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 January 27, 2022 (reference 03) decision was untimely. The decision that held the claimant was overpaid \$438.00 in regular state benefits for the two weeks between June 7, 2020 and June 20, 2020, due to an earlier disqualification decision, remains in effect.

REMAND:

Based on the claimant's assertion she did not receive the debit card to which benefits were disbursed, this matter is REMANDED to Iowa Workforce Development Integrity Bureau for further action as the Bureau deems appropriate.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

March 24, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.