

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY D MOZENA

Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 19A-UI-06549-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/27/13

Claimant: Appellant (6)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Amy Mozena, Claimant, filed an appeal from the September 25, 2013 (reference 07) unemployment insurance decision that found claimant was overpaid benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 12, 2019, at 9:05 a.m. Claimant participated with her representative, Wendy Spafford. Employer participated through Jessica List, Administrator. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 309 3rd Street Carnarvon, Lake View, Iowa on September 25, 2013. This was claimant's boyfriend's address at the time the notice was mailed. Claimant split her time between her residence and her boyfriend's residence during this time. The decision found that claimant was overpaid benefits in the amount of \$5,615.33 for the 22 weeks between March 17, 2013 and August 24, 2013. Claimant does not recall if or when she received the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 5, 2013. Claimant filed an appeal online on August 19, 2019; the appeal was received by the appeals section the same day. Claimant provided no reason for not filing her appeal earlier.

On August 11 2016, claimant was mailed a decision stating that her overpayment of unemployment insurance benefits was being withheld from her Iowa income tax refund. On February 5, 2017, claimant filed an unemployment benefit claim. On February 20, 2017, claimant was mailed a decision stating that she was eligible for benefits. Claimant did not receive benefits because they were being offset due to the overpayment in 2013. Claimant did

not contact Iowa Workforce Development to inquire why she was not receiving the benefits for which she was eligible.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 have a reasonable opportunity to file a timely appeal.

While it is unclear if or when claimant received the September 25, 2013 decision, claimant had notice of the adverse decision when her income tax refund was withheld in 2016 and when her benefits were offset in 2017. Claimant was able to file claims for benefits and, thus, was able to contact Iowa Workforce Development with questions about her claim. Claimant's appeal of the September 25, 2013 decision was received approximately six years after the due date. Claimant has not shown that the delay was due to division error or misinformation or to delay or other action of the United States postal service. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The September 25, 2013 (reference 07) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

acw/rvs