

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT RAMSELL
Claimant

CEDAR VALLEY HANDYMAN LLC
Employer

APPEAL 21A-UI-00914-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On December 1, 2020, the claimant filed an appeal from the July 17, 2020, (reference 01) unemployment insurance decision that found claimant overpaid benefits based on a failure to accurately report wages. The parties were properly notified about the hearing. A telephone hearing was held on February 12, 2021. Claimant participated. Employer participated through office manager Barbra Glaeser.

ISSUES:

Is the appeal timely?

Was the claimant overpaid benefits based on a failure to properly report wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 17, 2020, Iowa Workforce Development issued a reference 01 unemployment insurance decision that found claimant overpaid regular unemployment insurance benefits in the amount of \$127.00 based on a failure to accurately report wages for the one week ending July 11, 2020. The decision warned that an appeal was due by July 27, 2020. Claimant decided it was not worth appealing and paid the overpayment back to Iowa Workforce Development. Claimant did not realize this would also make him ineligible for the Federal Pandemic Unemployment Compensation payment he received for that week.

On November 20, 2020, Iowa Workforce Development issued a reference 02 unemployment insurance decision finding claimant overpaid Federal Pandemic Unemployment Compensation (FPUC) for the one week ending July 11, 2020, in the amount of \$600.00. Claimant timely appealed the decision.

Claimant worked approximately 19 hours during the one week ending July 11, 2020. Claimant was paid \$479.25 in gross wages. Claimant underestimated his wages for the one week ending July 11, 2020, and received regular unemployment insurance benefits in the amount of \$127.00.

Claimant's weekly benefit amount is \$425.00.

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, in pertinent part:

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. . . . 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.

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. Bd. 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 unemployment insurance 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions 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).

Even if the appeal is considered timely, the result remains the same.

Iowa Admin. Code r. 871-24.18 provides:

An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

Here, claimant earned more than his weekly benefit amount plus \$15 ($\$425 + \$15 = \440). Therefore, claimant was not eligible for benefits during the one week ending July 11, 2020, and was overpaid regular unemployment insurance benefits in the amount of \$127.00.

DECISION:

The July 17, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal is not timely. The decision finding claimant ineligible for benefits during the week ending July 11, 2020, and overpaid benefits due to excessive earnings remains in effect.



Christine A. Louis
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February 23, 2021
Decision Dated and Mailed

cal/scn