

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIELLA R JENSEN
Claimant

APPEAL NO: 21A-UI-18463-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/10/19
Claimant: Appellant (1R)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 30, 2020, (reference 02) unemployment insurance decision that concluded she was overpaid \$5,705.00 in regular unemployment insurance benefits. Claimant waived proper notice and a telephone hearing was conducted on September 17, 2021. The hearing was held together with Appeals 21A-UI-16444-JC-T. The claimant participated. Official notice of the administrative records was taken. Department Exhibit D-1 was admitted.

ISSUES:

Is the appeal timely?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of November 10, 2019. She was paid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$5,705.00 in regular unemployment insurance benefits between May 15, 2020 and June 6, 2020.

In an initial decision (reference 01) it was determined that the claimant was not eligible for regular unemployment insurance benefits funded by the State of Iowa as she was not able to and available for work. That decision was appealed by the claimant in Appeal No. 20A-UI-07328-S1-T and a decision was issued that affirmed the denial of regular unemployment insurance benefits.

Claimant filed an application for Federal Pandemic Unemployment Assistance (PUA) benefits and a decision was issued finding that the claimant was eligible for PUA benefits effective May 22, 2020 through June 6, 2020.

An initial decision dated October 30, 2020 was mailed to claimant's address of record. Claimant received the initial decision, which contained a warning that an appeal was due within 10 days of the date of mailing. Claimant tried to visit a local office within the appeal period and it was closed. Claimant then mailed her appeal through the US postal service within the appeal period. For unknown reasons, it was not received by IWD. Claimant refiled her appeal upon learning it was not received by way of a second unemployment decision. The appeal was filed on July 24, 2021. See Department Exhibit D-1.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

The credible evidence presented is that claimant filed an appeal in a timely manner but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the appeal shall be accepted as timely.

The next issue to address is whether claimant must repay the regular unemployment insurance benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$5,705.00 in regular unemployment insurance benefits. Whether the claimant's overpayment of regular unemployment insurance benefits should be partially recovered from her PUA benefits is remanded to the Benefits Bureau for review.

DECISION:

The October 30, 2020 (reference 02) initial decision is AFFIRMED. The claimant was overpaid \$5,705.00 in regular unemployment insurance benefits.

REMAND:

Whether the claimant's overpayment of regular unemployment insurance benefits should be partially recovered from her PUA benefits is remanded to the Benefits Bureau for review.



Jennifer L. Beckman
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September 29, 2021
Decision Dated and Mailed

jlb/mh