

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL J BENTON
Claimant

APPEAL 21A-UI-21162-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 01/03/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment
Iowa Code § 96.16(4) – Offenses and Misrepresentation

STATEMENT OF THE CASE:

On September 22, 2021, Daniel Benton (claimant/appellant) filed an appeal from the decision dated January 14, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant owed an unpaid fraud overpayment balance.

A telephone hearing was held on November 15, 2021. The parties were properly notified of the hearing. Claimant participated personally and was represented by Attorney Marlon Mormann. Iowa Workforce Development Department participated by Investigator Seth Jones and was represented by Attorney Jeffrey Koncsol.

Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant disqualified from benefits due to an unpaid fraud overpayment balance?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

A decision was issued on December 20, 2017, finding claimant was overpaid due to misrepresentation between July 19, 2015 and November 12, 2016. The decision provided the overpayment must be repaid before any further unemployment insurance benefits would be paid to him. It also stated that future unemployment insurance benefit payments may be withheld to recover the overpayment. Claimant did not appeal this decision further and it became final.

On June 1, 2018, Gov. Reynolds signed into law an act which added a new subsection 13 to Iowa Code Section 96.5. Iowa Code Section 96.5(13) remain in force and provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

Claimant subsequently filed a claim for benefits effective January 3, 2021. The appealed decision was issued shortly thereafter. It found the claimant still owed an unpaid fraud overpayment balance. It provided in part that unemployment insurance benefits could not be used to offset that overpayment and that the overpayment must be repaid to become eligible for benefits.

The administrative record shows the decision was mailed to claimant at the above address on January 14, 2021. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 24, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on September 22, 2021. Claimant testified that he did not receive the decision and was unaware of it until the date of hearing. The administrative law judge did not find claimant's testimony to be credible or reliable, as he was evasive in responding to questions and another party on his line could be heard speaking to him and telling him how to respond to questions.

Another decision was issued on March 10, 2021, which disqualified claimant from benefits based on a separation from employment. Claimant appealed that decision further and it was reversed in an administrative law judge's decision issued June 17, 2021. The administrative law judge held the separation was not disqualifying and allowed benefits, provided claimant was otherwise eligible. That decision remains in force.

Claimant contacted the Department approximately a month later due to having not received benefits. A Department representative contacted claimant and notified him he was ineligible for benefits due to the outstanding fraud overpayment balance. An Overpayment Statement of Amount Due was sent from the Department to claimant on or about September 15, 2021. It notified claimant of an overpayment balance of \$8,523.53. Claimant does not dispute that there is an unpaid fraud overpayment balance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated January 14, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant owed an unpaid fraud overpayment balance is therefore final and remains in force. The administrative law judge finds in the alternative that claimant is disqualified from benefits due to an unpaid fraud overpayment balance.

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:

- (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.
- (b)
- (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 administrative law judge finds claimant did receive the January 14, 2021 decision in a timely manner. The administrative law judge did not find claimant's testimony to the contrary to be credible or reliable, as he was evasive in responding to questions and another party on his line could be heard speaking to him and telling him how to respond to questions. The administrative record shows the decision was mailed to claimant at the correct address. Claimant has therefore not established not a good cause reason for delay and the administrative law judge therefore concludes the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

The administrative law judge notes that the Overpayment Statement of Amount Due sent from the Department to claimant on or about September 15, 2021 was not a decision and so is not appealable. See Iowa Code Section 96.6(2).

In the alternative, the administrative law judge finds the claimant does owe an unpaid fraud overpayment balance and is disqualified from benefits as a result.

Claimant argues that applying Iowa Code Section 96.5(13) to the unpaid fraud overpayment is not permissible. Specifically, claimant argues that it cannot be applied to the unpaid fraud

overpayment existing as of January 3, 2021 because the decision finding claimant was overpaid due to misrepresentation became final on December 30, 2017, approximately six months prior to Section 96.5(13) being signed into law. Claimant argues the issue of whether future unemployment insurance benefits can be used to offset the overpayment was previously adjudicated in that December 30, 2017 decision and so cannot be altered by the Department in the subsequent decision issued January 3, 2021.

Claimant points to the Employment Appeal Board's decision in 16B-IWDUI-319 in support of this contention. The administrative law judge finds that decision is distinguishable from the issue here. In that case the EAB found that a 15 percent fraudulent overpayment penalty could not be applied to an overpayment between March 31, 2013 and June 29, 2013, as the enacting language of the 15 percent fraudulent overpayment provision specifically provided that it would only apply to overpayments issued after July 1, 2013.

The administrative law judge finds the language of Section 96.5(13) does not include any such limitation as to when a disqualification based on an unpaid fraud overpayment balance may be imposed. However, even if it did, the Department's application of Section 96.5(13) to the unpaid fraud overpayment balance here is permissible because it applies only prospectively.

The decision appealed provides that, from the date of the January 3, 2021 decision, unemployment insurance benefits will not be issued to claimant and cannot be used to repay the unpaid fraud overpayment balance. There was an unpaid fraud overpayment balance as of that date. The fact that the decision finding the fraudulent overpayment was issued before Section 96.5(13) became law and at that time allowed unemployment insurance benefits to be used to offset the overpayment does not change the result.

The administrative law judge would likely find it impermissible for the Department to truly apply Section 96.5(13) retroactively: for example, if prior to that subsection becoming law claimant had been issued unemployment insurance benefits which were used to offset the overpayment and then after the subsection became law the Department issued a decision demanding repayment of those amounts, based on the new language. However, that is not the case here. The Department may apply the provisions of Section 96.5(13) to an existing fraudulent overpayment balance, even where that overpayment came into being prior to that subsection becoming law.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated January 14, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant owed an unpaid fraud overpayment balance is therefore final and remains in force. The administrative law judge finds in the alternative that claimant is disqualified from benefits due to an unpaid fraud overpayment balance.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

December 17, 2021
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.