

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RAKIM TULLIS
Claimant

APPEAL NO. 20A-UI-15650-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/19/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.3(7) – Overpayment

STATEMENT OF THE CASE:

The claimant filed a late appeal from the October 29, 2020 (reference 05) decision that held the claimant was overpaid \$3,240.00 in regular benefits for nine weeks between April 19, 2020 and June 20, 2020, based on a June 25, 2020 decision that disqualified the claimant for benefits in connection with a determination that he was not able and available for work. A hearing was originally scheduled for January 16, 2021, but was rescheduled by agreement for January 9, 2021. The claimant participated and waived the 10-day formal notice requirement so that the hearing could proceed on January 9, 2021. Exhibit A, the online appeal, was received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-15651-JTT. The administrative law judge took official notice of the following Agency administrative records: October 29, 2020 (reference 05) overpayment decision, the November 3, 2020 (reference 06) FPUC overpayment decision, the June 25, 2020 (reference 03) availability decision, the administrative law judge decision in Appeal Number 20A-UI-09020-CL-T, DBRO, KPYX and NMRO.

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: On October 29, 2020, Iowa Workforce Development mailed the October 29, 2020 (reference 05) to the claimant's Des Moines last-known address of record. The decision held that the claimant was overpaid \$3,240.00 in regular benefits for nine weeks between April 19, 2020 and June 20, 2020, based on a June 25, 2020 decision that disqualified the claimant for benefits in connection with a determination that he was not able and available for work. The decision stated that the decision would become final unless an appeal was postmarked by November 8, 2020 or received by the Appeal Section by that date. The decision stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. November 8, 2020 was a Sunday and the next working day was Monday, November 9, 2020. The claimant received the October 29, 2020 (reference 05) decision in a

timely manner, prior to the deadline for appeal. On November 10, 2020, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal on November 10, 2020.

On November 3, 2020, Iowa Workforce Development mailed a second, different overpayment decision to the claimant. This additional decision was the November 3, 2020 (reference 06) decision that held the claimant was overpaid \$5,400.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the nine-week period ending June 20, 2020, based on the June 25, 2020 decision that denied benefits. The reference 06 decision included a November 13, 2020 deadline for appeal. The claimant erroneously concluded that the October 29, 2020 (reference 05) decision and the November 3, 2020 (reference 06) were duplicative. The two overpayment decisions were regarding different types of benefits, regular state benefits versus the extra \$600.00 in weekly federal benefits referred to as Federal Pandemic Unemployment Compensation (FPUC). Each decision included a customer service telephone number the claimant could call if he had questions about the decisions. Each decision included a telephone number for the Appeals Bureau. Each decision included clear and concise instructions for filing an appeal. The claimant did not contact the Agency with questions. The claimant heeded the November 13, 2020 appeal deadline for reference 06 decision, but did not heed the November 9, 2020 extended appeal deadline for the reference 05 decision.

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 on the October 29, 2020 (reference 05) decision and the November 10, 2020 appeal. 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).

The evidence in the record establishes that the appeal from the October 29, 2020 (reference 05) decision was an untimely appeal. The claimant received the decision in a timely manner and had a reasonable opportunity to file an appeal from the decision by the extended November 9, 2020 appeal deadline. The claimant elected to delay filing the appeal until November 10, 2020, after the deadline applicable to the reference 05 decision had passed. Because the late filing of the appeal was attributable to the claimant's decisions and action, rather than attributable to IWD or to 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 from the October 29, 2020 (reference 05) overpayment decision was untimely, the administrative law judge lacks jurisdiction to disturb that decision. 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 October 29, 2020 (reference 05) overpayment decision was untimely. The decision that held the claimant was overpaid \$3,240.00 in regular benefits for nine weeks between April 19, 2020 and June 20, 2020 remains in effect.



James E. Timberland
Administrative Law Judge

January 26, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**