

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TERESA DALEN
Claimant

APPEAL NO. 15A-UI-08000-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT

OC: 06/26/11
Claimant: Appellant (1)

Iowa Code Section 96.3(7) – Overpayment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Teresa Dalen filed a late appeal from the December 21, 2011, reference 04, decision that she was overpaid \$376.00 for eight weeks between June 26, 2011 and August 20, 2011. The decision indicated that it was prompted by an August 29, 2011 decision that denied benefits, based on an Agency conclusion that Ms. Dalen was not able and available for work. After due notice was issued, a hearing was held on August 13, 2015. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-07999-JTT. Ms. Dalen participated. The administrative law judge received Department Exhibits D-1 through D-9 into evidence.

ISSUE:

Whether there is good cause to treat Ms. Dalen's late appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Dalen established an original claim for benefits that was effective June 26, 2011 and received benefits. On August 29, 2011, Iowa Workforce Development mailed a copy of the August 29, 2011, reference 02, decision to Ms. Dalen at her then correct address of record. Ms. Dalen received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal from the decision must be postmarked by September 8, 2011, or be received by the Appeals Section by that date. Ms. Dalen did not file an appeal from the decision by the appeal deadline. No Workforce Development representative told Ms. Dalen not to file an appeal or told her there was nothing she could do concerning the decision.

On December 21, 2011, Iowa Workforce Development mailed a copy of the December 21, 2011, reference 04, decision to Ms. Dalen at her then correct address of record. Ms. Dalen received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal from the decision must be postmarked by December 31, 2011 or received by the Appeals Section by that date. Ms. Dalen did not file an appeal from the decision by the appeal deadline. No Workforce Development representative told Ms. Dalen not

to file an appeal from the decision or that she did not need to worry about the decision if she did not plan to claim benefits in the future.

Workforce Development thereafter mailed overpayment statements to Ms. Dalen at her correct address of record. The purpose of the overpayment statements was to demand payment from Ms. Dalen for overpaid benefits in light of one or more disqualification decisions, including the August 29, 2011, reference 02, decision and one or more overpayment decisions, including December 21, 2011, reference 04, decision. The Agency mailed the overpayment decisions on January 12, 2012, January 2, 2013, March 18, 2013, April 16, 2013, April 1, 2014, and April 1, 2015. Ms. Dalen ignored each and every overpayment decision.

On June 25, 2015, Ms. Dalen emailed an appeal to UI Claims Help at Iowa Workforce Development. The Benefits Bureau at Iowa Workforce Development forwarded the appeal to the Appeals Section. The Appeals Section received the appeal by email on June 26, 2015. Ms. Dalen's appeal was prompted by steps the State of Iowa had taken to offset her state employment mileage reimbursement toward recovering the overpayment of benefits.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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 871 AC 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 871 IAC 24.35(1)(b).

Ms. Dalen's appeal from both decisions was filed on June 25, 2015, when the Benefits Bureau received the appeal by email.

The evidence in the record establishes 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. 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.

The administrative law judge concludes that failure 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. See 871 IAC 24.35(2). The administrative law judge further concludes that the delay in filing the appeal was unreasonable. See 871 IAC 24.35(2)(c). Because that the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb either lower 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 December 21, 2011, reference 04, decision is affirmed. The claimant's appeal in this case was not timely. The decision that the claimant was overpaid \$376.00 in benefits for eight weeks between June 26, 2011 and August 20, 2011 remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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