

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANDREW Q BLAKEY
Claimant

APPEAL NO: 22A-UI-04825-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/31/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 4, 2021, (reference 07) unemployment insurance decision that concluded he was overpaid \$1,235.07 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on March 30, 2022. The hearing was held jointly with appeal 22A-UI-04822-SN-T, 22A-UI-04824-SN-T, 22A-UI-04826-SN-T, and 22A-UI-04827-SN-T. The claimant participated. Official notice of the administrative records was taken. Exhibits D-1 and D-2 were received into the record. Official notice was taken of the agency records.

ISSUES:

Whether the claimant's appeal was timely? Whether there are reasonable grounds to consider the appeal otherwise 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:

A disqualification decision was mailed to the claimant's last known address of record on October 4, 2021. The claimant did receive the decision within ten days. (Exhibit D-1) The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 14, 2021. The appeal was not filed until February 16, 2022, which is after the date noticed on the disqualification decision. (Exhibit D-2)

The claimant explained the delay in filing his appeal was due to how poorly he was treated in his fact-finding interview. The claimant stated the representative put words in his mouth and hung up on him after 10 minutes of being on the phone. The claimant reasoned at that time that it was futile to appeal. However, he eventually did appeal because he believed the State of Iowa would

use his tax refund for 2021 to offset his existing overpayments. The claimant stated he could not be sure he received the subsequent overpayment decisions.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant's appeal is not timely. There are not reasonable grounds to consider the claimant's appeal otherwise timely.

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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 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. 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.

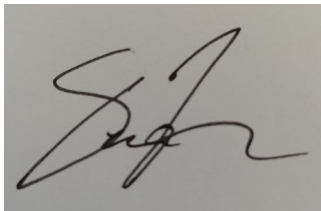
Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. While the administrative law judge recognizes that an unprofessional factfinding such as the one described by the claimant can be discouraging, this does not excuse him from filing during the appeal period. This is because the delay was due to the claimant weighing his chances of success on appeal, which shows he had a reasonable opportunity file an appeal before the deadline. In any event, the claimant has not shown that the delay in filing the appeal was due to an error on the part of Iowa Workforce Development, the US Postal Service, or some other factor out of his control that denied him a reasonable opportunity to 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 pursuant to 871 IAC 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The October 4, 2021, (reference 07) decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

April 7, 2022
Decision Dated and Mailed

smn/scn