

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURA J KINNARD
Claimant

APPEAL 18A-UI-07579-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 05/07/17
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Misrepresentation/Fraud

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 5, 2018 (reference 03) unemployment insurance decision that found she was overpaid benefits of \$8,898.00 between May 7, 2017 and November 4, 2017 because she failed to report wages earned with Drake University and Des Moines Area Community College. A telephone hearing was held on August 7, 2018. The claimant, Laura J. Kinnard, participated personally. Iowa Workforce Development (“IWD”) participated through witness Sean Clark. Claimant’s Exhibits A – C were admitted. IWD Exhibits 1 – 12 were admitted. The administrative law judge took official notice of the claimant’s administrative records.

ISSUE:

Is the claimant’s appeal timely?

FINDINGS OF FACT:

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

An unemployment insurance decision dated July 5, 2018 (reference 03) finding that claimant was overpaid benefits of \$8,898.00 between May 7, 2017 and November 4, 2017 because she failed to report wages earned with Drake University and Des Moines Area Community College was mailed to the claimant at her correct address of record. Claimant received the decision on July 10, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeal Section by July 15, 2018. The decision also stated that if that due date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. July 15, 2018 was a Sunday.

Claimant filed her appeal on July 17, 2018 at 12:28 a.m. by using the online appeal website. On the website under the heading, “Explain why you disagree with the decision that is being appealed,” it states that “Your description is limited to 500 characters” and that “If needed you may attach a document with your information.” A couple of minutes before midnight, claimant kept changing the wording in this section to fit within the 500-character maximum. Because she

kept changing the wording in her appeal to fit within the 500-character maximum, it was after midnight when she actually submitted an appeal that fit within the correct parameters.

When submitting her appeal, claimant knew it was untimely. This is clear because she stated in her appeal under "reason for late appeal" that "I tried to submit before midnight and the wording was too long...I had to retype and resubmit. It came in after midnight. So sorry! Hope you can still accept. Message received after I tried to submit: Temporarily Unavailable The website that you're trying to reach is having technical difficulties and is currently unavailable. We are aware of the issue and working hard to fix it. Thank you for your patience." See Exhibit 1.

Claimant did not provide any credible testimony that she received an error message prior to the due date expiring that was due to division website problems. Claimant was unable to submit the appeal in the days prior to July 17, 2018 because she was too busy in her personal life after returning from a trip.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that the claimant received the decision prior to the appeal due date and 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)(emphasis added). 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. In this case, the claimant received the decision with ample time to file an appeal. Claimant chose to wait until the very last minute to file the appeal online. When claimant tried to file the appeal, the wording she chose was too long and she had to retype the appeal. Iowa Admin. Code r. 871-24.35(1) provides that the date the appeal is received is the date of submission.

Iowa Admin. Code r. 871-24.35(1) provides:

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

(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 of 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. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1) "a" and "b," **on the date it is received by the division.**

(emphasis added).

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.

Iowa Admin. Code r. 871-24.35(2) provides that the submission of an appeal not within the specified statutory 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. The reason for the late appeal filing in this case was because the claimant chose to submit an appeal that contained too many words, in violation of the express online instructions. She then chose to continue changing the wording of her appeal until the midnight deadline passed. This was claimant's error, not the division's error.

Similarly, if a claimant chooses to mail an appeal letter using the United States Postal Service but fails to affix the correct postage, this would not be delay due to division error. Delays due to claimant's errors are not considered good cause reasons. If the delay were due to inoperative division website, then the delay would have been reasonable; however, that was not the case in this matter. There was no credible testimony provided that the claimant received any error message due to error on the part of the division that thwarted her efforts to file an appeal prior to the July 16, 2018 deadline. As such, the claimant has not shown any good cause for failure to comply with the jurisdictional time limit to file an appeal within the specified appeal period.

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 Iowa Admin. Code r. 871-24.35(2). As such, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The July 5, 2018 (reference 03) decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs