

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**MICHELLE K RICO**  
Claimant

**LIONHEART EARLY LEARNING INC**  
Employer

**APPEAL 21A-UI-03322-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Admin. Code r. 871-24.18 – Wage-Earning Limitation

**STATEMENT OF THE CASE:**

The claimant/appellant, Michelle K. Rico, filed an appeal from the April 15, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant overpaid benefits based on a failure to accurately report wages. The parties were properly notified about the hearing. A telephone hearing was held on March 25, 2021. The hearing was held jointly with Appeal 21A-UI-03323-JC-T. The claimant participated. The employer, Lionheart Early Learning Inc., participated through Haili Smith.

The administrative law judge took official notice of the administrative records. Department Exhibit D-1 and Claimant Exhibits A and B were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the appeal timely?

Was the claimant overpaid benefits based on a failure to properly report wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a driver and was separated from employment on March 15, 2020. Claimant established a claim for unemployment insurance benefits with an effective date of April 5, 2020. Claimant’s weekly benefit amount is \$199.00. Claimant made weekly continued claims for the weeks ending March 21, 2020 and April 4, 2020. She received \$199.00 per week in regular unemployment insurance benefits, for a total of \$597.00 for the three week period.

Claimant earned \$0.00 in wages for the week ending March 21, 2020. Claimant earned \$0.00 in wages for the week ending March 28, 2020. Claimant earned \$0.00 in wages for the week ending April 4, 2020.

Claimant's overpayment arises from her attempting to self-report a correction of wages to the IWD customer service line. No investigation was done to confirm the wages before the agency issued the overpayment decision. A review of the administrative records reflects the claimant reported initially \$22.00 in wages for March 21, 2020 and no wages for the two-week period ending April 4, 2020.

An initial decision establishing an overpayment of benefits was mailed to claimant's last known address on April 15 2020. The decision contained a warning that an appeal must be filed by April 25, 2020. Claimant received her initial decision within the prescribed period to appeal. The initial decision contained instructions that directed her to call customer service with questions regarding the decision. Claimant did not call customer service. Claimant did not present evidence that her appeal was delayed due to agency or postal service error. Claimant filed her appeal on January 19, 2021 after Ms. Smith called IWD on claimant's behalf, trying to help her, and was advised the claimant needed to file an appeal. See *Department Exhibit D-1*.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

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 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 unemployment insurance 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). 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 administrative law judge is extremely sympathetic to the claimant. However, the claimant did not contact IWD to file an appeal or question the initial decision for almost nine months after it was mailed to her. The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions 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). 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. 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 April 15, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal is not timely. The overpayment of \$597.00 remains in effect.



---

Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

March 26, 2021

Decision Dated and Mailed

jlb/kmj

**NOTE TO CLAIMANT:**

This decision determines you are not eligible for regular unemployment insurance benefits. 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 due to disqualifying separations 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.** More information about how to apply for PUA is available online at:

[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>