

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY L JONES
Claimant

APPEAL NO: 13A-UI-09444-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/12/13
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayment
871 IAC 24.35(2) – Appeal
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 6, 2013, reference 03, that held she is overpaid unemployment (UI) benefits \$3,534.00 for a nine-week period ending July 13, 2013, because an Administrative Law Judge (ALJ) July 17, 2013 decision disqualified her. A telephone hearing was held on September 19, 2013. The claimant participated.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The department mailed the decision to claimant's address of record on August 6, 2013 with an appeal deadline date of August 16. The claimant attempted an appeal to UI Appeals on August 15, as she offered a fax number to support it. UI Appeals acknowledges a claimant appeal on August 19, 2013.

Claimant filed a UI claim effective May 12, 2013. The department issued claimant a favorable decision on June 4 that allowed benefits on her May 13 employment separation at Mayflower Home. The employer participated in department fact finding, and it appealed.

An ALJ issued a July 17, 2013 decision (Appeal 13A-UI-06818-BT) that reversed the department June 4 decision and disqualified claimant from receiving benefits. Claimant had received nine weeks of benefits totaling \$3,534.00 before the disqualification and the ALJ remanded the overpayment issue to Claims who issued the decision under review in this matter.

Claimant appealed the July 17 ALJ decision to the Employment Appeal Board (EAB). The department record does not show a final decision has been issued by EAB as of the date of this hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.35(2) provides:

(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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

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 department 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 department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant filed a timely appeal. She faxed an appeal to UI Appeals on August 15 and due most probably to department error it was not acknowledged until August 19.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge further concludes claimant is overpaid benefits \$3,534.00 due to a July 17, 2013 ALJ decision that disqualified her. Claimant does not dispute she received the benefits before the disqualification.

Since the employer participated at department fact finding, there is no relief that can be granted to claimant from the repayment of the overpayment.

DECISION:

The department decision dated August 6, 2013, reference 03, is affirmed. The claimant filed a timely appeal. Claimant is overpaid benefits \$3,534.00.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css