

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EILEEN M MAYER
Claimant

APPEAL NO. 11A-UI-16095-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/10/10
Claimant: Appellant (2)**

Section 96.3-7 – Recovery of Overpayments
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Eileen M. Mayer filed an appeal from an unemployment insurance decision dated November 18, 2011, reference 04, that ruled she had been overpaid unemployment insurance benefits in the amount of \$1,792.00 for the eight weeks ending March 13, 2010. After due notice was issued, a telephone hearing was held January 19, 2012, with Ms. Mayer participating. Exhibits D-1 and D-2 were admitted into evidence.

ISSUES:

Can the appeal be accepted as timely?

Must the claimant repay the benefits she has received?

FINDINGS OF FACT:

Eileen M. Mayer received unemployment insurance benefits totaling \$1,792.00 for the eight weeks ending March 13, 2010. A fact-finding decision dated January 27, 2010, allowed benefits to Ms. Mayer. Her former employer, Murphy Oil USA, did not participate in the fact-finding interview. It submitted a document stating only that Ms. Mayer had resigned for personal reasons. The employer filed an appeal from the fact-finding decision. An administrative law judge decision dated March 12, 2010, denied benefits to Ms. Mayer. Ms. Mayer did not file an appeal from that decision.

Ms. Mayer filed the present appeal by mail on Monday, November 21, 2011. It did not receive a postmark until December 14, 2011.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the appeal can be accepted as timely. It can.

The evidence establishes that Ms. Mayer did all in her power to file an appeal via the U.S. Postal Service on Monday, November 21, 2011. For reasons beyond the claimant's

control, the envelope did not receive a postmark until December 14, 2011. When delay in the filing of an appeal is the fault of the U.S. Postal Service, additional time for the appeal may be granted. See 871 IAC 24.35. Finding that the delay in the appeal was the fault of the U.S. Postal Service, the administrative law judge concludes that the appeal may be accepted as timely.

The remaining question is whether the claimant must repay the benefits she has received.

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 factual question is whether the employer participated in the fact-finding process. The evidence establishes that the employer did not participate in the fact-finding interview and submitted a written statement indicating only that the claimant resigned for personal reasons. No narrative of the actual reason for the resignation and no copy of the appeal document was submitted. The administrative law judge concludes that the employer did not sufficiently participate in the fact-finding process. Under these circumstances, the benefits need not be repaid.

DECISION:

The unemployment insurance decision dated November 18, 2011, reference 04, is reversed. The claimant has not been overpaid for the eight weeks ending March 13, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw