

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL J JELINSKE**  
Claimant

**APPEAL 18A-UI-04659-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 02/26/17  
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/appellant filed an appeal from the September 26, 2017 (reference 09) unemployment insurance decision that found claimant was overpaid benefits in the amount of \$447.00 for one week between August 13, 2017 and August 19, 2017. Claimant was properly notified of the hearing. A telephone hearing was held on May 9, 2018. The claimant participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the audio recording and decision from Appeal 17A-UI-05101-H2-T.

**ISSUES:**

Did the claimant file a timely appeal?

Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

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

A decision dated September 26, 2017 (reference 09) found that the claimant was overpaid benefits of \$447.00 due to a disqualification decision dated September 15, 2017 (reference 07) that found he was not available for work due to being on vacation from August 13, 2017 through August 19, 2017. Claimant received a copy of the decision dated September 26, 2017 (reference 09) in the mail prior to the appeal deadline listed on the decision of October 6, 2017. Prior to October 6, 2017, claimant filed an appeal using the Iowa Workforce Development ("IWD") online appeal system. Claimant received a confirmation that his appeal was received.

After several weeks of not hearing anything from IWD about his appeal, claimant sent an email to an IWD employee asking about his appeal. He was waiting to hear back from the IWD employee about the status of the appeal. He had received a response to his first email to the IWD employee but not to his second email to the IWD employee. Several weeks later, he telephoned IWD and he was eventually informed that no appeal to the September 26, 2017

(reference 09) decision had been received. He then filed an appeal using the online appeal system on April 18, 2018. Claimant does not recall how many days past between him learning that no appeal had been received by IWD and him filing his appeal on April 18, 2018.

The claimant received benefits of \$447.00 for one week between August 13, 2017 and August 19, 2017. The overpayment issue in this case was created by a disqualification decision that has been affirmed.

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

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did file a timely appeal.

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.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

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 by any means other than the United States postal service on the date it is received by the division.

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.

Claimant credibly testified that he filed an online appeal prior to the appeal deadline of October 6, 2017. However, no appeal was received by IWD. When claimant attempted to seek out assistance from IWD about the appeal a second time, he never received an email back.

Claimant filed a timely appeal prior to the appeal deadline but it was not received by IWD. Claimant's delay in filing his second appeal was due to agency error or agency misinformation. Iowa Admin. Code r. 871-24.35(2). As such, the claimant has shown that there was a good cause for his late appeal filing. *Id.*

The next issue is whether the claimant is overpaid benefits. The administrative law judge finds that the claimant is overpaid benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

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 § 96.8, subsection 5.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$447.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been affirmed.

**DECISION:**

The claimant filed a timely appeal. The September 26, 2017 (reference 09) unemployment insurance decision is affirmed. The claimant has been overpaid unemployment insurance benefits of \$447.00 from August 13, 2017 through August 19, 2017 to which he was not entitled. Those benefits must be recovered in accordance with Iowa law.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs