

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE R FAULKNER
Claimant

APPEAL NO: 12A-UI-06529-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/22/12
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's May 30, 2012 determination (reference 04) that held she had been overpaid \$1,205.00 in benefits she received for the weeks ending January 28 through February 18, 2012. The claimant participated in the hearing. The claimant waived the notice requirements so the issues of whether she filed a timely appeal from reference 01 and whether she was eligible to receive benefits for the weeks ending January 28 through February 18, 2012, could also be addressed at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant has been overpaid for benefits she received for the above weeks.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Has the claimant been overpaid \$1,205.00 in benefits she received for the weeks ending January 28 through February 18, 2012?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of January 22, 2012. She filed claims for the weeks ending January 28 through February 18, 2012. She received the following weekly benefits:

<u>Weekending</u>	<u>Benefits Received</u>
January 28	\$312.00
February 4	\$240.00
February 11	\$360.00
February 18	\$293.00

A March 9 determination (reference 01) was mailed to the claimant and her former employer, CCW LLC. This determination held the claimant ineligible to receive benefits for the weeks ending January 28 through February 18, 2012, because the claimant was not available to work. The claimant initially decided she would not appeal this determination. Another determination (reference 02) was also mailed to the claimant and her former employer. The employer appealed this determination because the claimant had been determined qualified to receive benefits based on the reasons for her employment separation.

After the claimant received the hearing notice, she assumed her availability would also be discussed at this hearing. When the employer did not participate at the scheduled hearing, the administrative law judge told the claimant the issue concerning her availability could not be addressed because she had not appealed it. The claimant did nothing more because she assumed it would be a hassle to have a hearing for three or four weeks of benefits.

When the claimant timely appealed the May 30, 2012 determination, she assumed her eligibility for the weeks ending January 28 through February 18, 2012, would also be addressed during the hearing.

REASONING AND CONCLUSIONS OF LAW:

The law states an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant filed her appeal from reference 01 after the March 19, 2012 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence indicates the claimant had a reasonable opportunity to appeal, but did not.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a timely appeal, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal for reference 01. This means that this determination, reference 01, cannot be changed and the claimant remains ineligible to receive benefits for the weeks ending January 28 through February 18, 2012.

Even though the claimant presented testimony about her availability to work during the weeks in question this evidence is not discussed in the decision because the Appeals Section does not have any authority to change reference 01.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Since the March 9 determination (reference 01) has been affirmed, the claimant is not legally entitled to receive benefits for the weeks ending January 28 through February 18, 2012. As a result, the claimant is not legally entitled to receive benefits for the weeks ending January 28 through February 18, 2012. The claimant was overpaid a total of \$1,205.00 in benefits for these weeks. As of July 7, 2012, the claimant does not owe any

money to the Department because the overpayment has already been offset with the benefits she was eligible to receive since mid-May 2012.

DECISION:

The representative's May 30, 2012 determination (reference 04) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal from a March 9, 2012 determination (reference 01). Therefore, the March 9, 2012 determination cannot be changed and the claimant remains ineligible to receive benefits for the weeks ending January 28 through February 18, 2012. As a result of the March 9 determination (reference 01) the claimant is not legally entitled to receive benefits for the weeks ending January 28 through February 18, 2012. The claimant has been overpaid \$1,205.00 in benefits she received for these weeks. As of July 7, 2012, the claimant does not owe any money because the overpayment has been offset by benefits the claimant was entitled to receive since mid-May 2012.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css