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

RACHELLE E MCKERN PACHECO
Claimant

IOWA WORKFORCE
 DEVELOPMENT DEPARTMENT

APPEAL NO: 18A-UI-11709-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/14/18
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 filed an appeal from the November 20, 2018, (reference 02) unemployment insurance decision that established an overpayment of benefits. The claimant was properly notified about the hearing. A telephone hearing was held on December 18, 2018. The claimant participated. The hearing was held jointly with 18A-UI-11708-JC-T. Department Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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?
Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The reference 02 initial decision was mailed to the claimant's address of record on November 20, 2018. The claimant received the November 19, 2018 reference 01 decision but did not receive this decision. The first notice of the overpayment was on December 4, 2018, by way of communication with IWD. The claimant then filed an appeal the same day (Department Exhibit D-1).

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 14, 2018. The claimant filed for and received a total of $1,168.00 in unemployment insurance benefits for the weeks between October 14, 2018 and November 11, 2018. The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 18A-UI-11708-JC-T.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the reference 02 decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant stated she learned of the overpayment decision at a December 4, 2018 IWD meeting. The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 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.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid $1,168.00 in unemployment insurance benefits.

DECISION:

The November 20, 2018, (reference 02) decision is affirmed. The appeal is timely. The claimant has been overpaid benefits in the amount of $1,168.00, which must be repaid.

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Jennifer L. Beckman
Administrative Law Judge

_____
Decision Dated and Mailed

jlb/scn