

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN D SCOTT
Claimant

APPEAL NO. 08A-UI-05423-H2T

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03-30-08 R: 02
Claimant: Appellant (1)

Section 96.3(7) - Recovery of Benefit Overpayment
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed the May 16, 2008, reference 03, decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$239.00 for the one-week period ending April 5, 2008 as a result of an ineligibility decision. A telephone hearing was scheduled to be held on June 24, 2008, pursuant to due notice. The claimant did participate.

ISSUES:

The issue is whether claimant was overpaid unemployment insurance benefits.

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The overpayment issue in this case was created by the ineligibility decision that has now been affirmed. The claimant was in jail from May 8 through May 31 and was hospitalized with a spider bite from June 5 through June 10. He did not have an opportunity to file an appeal until he was released from the hospital by which time the date for the appeal had already passed.

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 § 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, subsection 10, 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 fact-finder's decision because the decision was not received in time for him to file a timely appeal. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

The administrative law judge concludes claimant has been overpaid benefits.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$239.00 pursuant to Iowa Code § 96.3(7) as the ineligibility decision that created the overpayment decision has now been affirmed.

DECISION:

The May 16, 2008, reference 03, decision is affirmed. The claimant's appeal is timely. The claimant has been overpaid unemployment insurance benefits in the amount of \$239.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css