

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PHUONG P NGUYEN**  
Claimant

**APPEAL 18A-UI-11160-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 08/05/18**  
**Claimant: Appellant (4)**

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 October 19, 2018 (reference 07) unemployment insurance decision that found claimant was overpaid benefits of \$3,199.00 for nine weeks between August 5, 2018 and October 6, 2018. Claimant was properly notified of the hearing. A telephone hearing was held on December 3, 2018. The claimant, Phuong P. Nguyen, participated personally. CTS Language Link provided language interpretation services to the claimant. Department's Exhibit D1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**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:

An unemployment insurance decision was mailed to the claimant's correct address of record on October 19, 2018 (reference 07). The decision stated that October 29, 2018 was the deadline to file an appeal if she disagreed with the decision. Claimant received the decision in the mail and approximately one week after receiving the decision, she visited with her local Iowa Workforce Development ("IWD") office about it. A representative at IWD told her that "everything was OK" and that her weekly claim benefits would offset any overpayment of benefits she received. Claimant only reads the English language a little bit and did not understand that she had to file an appeal to the decision on or before October 29, 2018. Claimant went back to IWD on or about November 14, 2018 and a representative at the IWD office helped her complete an appeal to the decision.

Claimant had been employed full-time for this employer from September of 2000 until August 3, 2018. She was laid-off and received a lump sum separation payment in exchange for signing the separation agreement. See Exhibit D1 (paragraph 1). Claimant also received gross wages

of \$577.00 per week from August 4, 2018 through October 2, 2018, regardless of whether she signed the separation agreement. See Exhibit D1 (paragraph 2). Claimant filed her initial claim for unemployment insurance benefits effective August 5, 2018. Her weekly benefit amount is \$371.00 and she received \$371.00 per week from August 5, 2018 through October 6, 2018.

The separation payment listed in paragraph 1 of the separation agreement was determined not to be deductible from unemployment insurance benefits. See Unemployment Insurance Decision issued August 9, 2018 (reference 01). Two unemployment insurance benefit decisions were issued on October 19, 2018 (reference 05 and reference 06). Both decisions found that the claimant received wages that were deductible under paragraph 2 of the separation agreement and she was therefore not entitled to unemployment insurance benefits between August 5, 2018 through September 29, 2018 and was only entitled to a reduced benefit payment from September 30, 2018 through October 6, 2018. Both of these decisions were affirmed. Claimant had earned wages in lieu of notice of \$577.00 for each week between August 5, 2018 and September 29, 2018. Claimant had also earned wages in lieu of notice for two days on October 1, 2018 and October 2, 2018 in the amount of \$231.00 (rounded to the nearest dollar) for the benefit week-ending October 6, 2018.

## **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's appeal shall be accepted as timely.

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.

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and 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(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.

(emphasis added).

Claimant credibly testified that she visited her local IWD office approximately one week after receiving the decision in the mail and was told, "everything was OK" by an IWD representative. Given the claimant's limited ability to read the English language and the fact that she was told that "everything was OK" by an IWD representative, the claimant has established that her delay in submission of her appeal was due to division error or misrepresentation. As such, her appeal shall be considered as timely.

The next issue is whether the claimant was overpaid unemployment insurance benefits between August 5, 2018 and October 6, 2018.

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 claimant was paid her gross weekly benefit amount of \$371.00 for each week between August 5, 2018 and September 29, 2018; however, the claimant received gross wages in lieu of notice in excess of her weekly-benefit amount for each week from August 5, 2018 through September 29, 2018. As such, she is overpaid unemployment insurance benefits of \$2,968.00 for the eight-week period between August 5, 2018 and September 29, 2018 to which she was not entitled (\$371.00 for eight weeks = \$2,968.00). Further, the claimant received unemployment insurance benefits of \$371.00 for the one-week period beginning September 30, 2018 and ending October 6, 2018, but she was not eligible for her full weekly benefit amount that week.

Iowa Admin. Code r. 871—24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount. This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

As such, the claimant can earn up to 25% of her weekly-benefit amount before any deduction is made. Iowa Admin. Code r. 871-24.18. Anything over 25% of her weekly-benefit amount is deducted dollar for dollar. *Id.*

Twenty-five percent of the claimant's weekly-benefit amount is \$92.00. Claimant earned gross wages for two work days (October 1, 2018 and October 2, 2018) of \$231.00 (rounded to the nearest dollar). Her gross wages earned of \$231.00, less her allowance of \$92.00 is \$139.00 that would be deductible from her weekly-benefit amount. Her weekly-benefit amount of \$371.00, less \$139.00 (deductible wages) is \$232.00, which is what the claimant would have been entitled to receive for the week-ending October 6, 2018. However, she received her regular weekly benefit amount of \$371.00. As such, claimant was overpaid unemployment insurance benefits of \$139.00 for the week-ending October 6, 2018. This amount is in addition to the overpayment of benefits from August 5, 2018 through September 29, 2018.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits of \$3,107.00 between August 5, 2018 and October 6, 2018 pursuant to Iowa Code § 96.3(7), as the disqualification decisions that created the overpayment have been affirmed.

**DECISION:**

The October 19, 2018 (reference 07) unemployment insurance decision is modified in favor of the appellant. The claimant has been overpaid unemployment insurance benefits of \$3,107.00 for nine weeks between August 5, 2018 and October 6, 2018 to which she 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