

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JUAN C GUTIERREZ**  
Claimant

**APPEAL 17A-UI-02859-LJ**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/22/17  
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 appealed the March 2, 2017, (reference 02), decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$490.00 for the two week period ending February 4, 2017, as a result of a disqualification decision. Claimant appeared for an in-person hearing on Tuesday, March 14, 2017, and he agreed to waive notice to hear this appeal at the same time. Claimant appeared and participated in the hearing.

**ISSUES:**

Is the appeal timely?  
Is the claimant overpaid benefits?

**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 a disqualification decision that has now been affirmed. (See, 17A-UI-01744-LJ) Claimant did receive benefits in the gross amount of \$490.00. Claimant confirmed during the hearing that he received two weeks of benefits on a debit card issued by Iowa Workforce Development. Claimant testified that he did not file an appeal of the overpayment decision. He explained that when he went into his local Iowa Workforce Development office to discuss a concern with the overpayment issue, someone informed him that he already had appealed the overpayment decision.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's appeal is timely filed and claimant has been overpaid benefits for the period in question.

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's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. Specifically, claimant was told that he already filed an appeal of the decision and did not need to appeal again. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

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) (a) 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 \$490.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been affirmed.

**DECISION:**

The March 2, 2017, (reference 02) decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the gross amount of \$490.00 to which he was not entitled and those benefits must be recovered in accordance with Iowa law.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed