

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MUOM BENG
Claimant

APPEAL NO: 13A-UI-07475-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/27/12
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 29, 2013 determination (reference 03) that held her overpaid \$415.00 in benefits she received for the week ending March 16, 2013. The overpayment occurred because the claimant did not correctly report wages she earned the week ending March 16, 2013. The claimant participated in the hearing. Based on the evidence, the claimant's arguments, the administrative record and the law, the administrative law judge concludes the claimant has been overpaid \$415.00 in benefits for the week ending March 16, 2013, and is required to pay this amount back to the Department.

ISSUES:

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

Has the claimant been overpaid \$415.00 in benefits for the week ending March 16, 2013?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of May 27, 2012. She filed a claim for the weeks ending March 16 and 23, 2013. The claimant reported she earned \$75.00 in wages for each of these weeks. The claimant received a gross benefit payment of \$415.00 for each week.

The claimant appealed a determination that was mailed on May 7, 2013, reference 03. There were other determinations the claimant did not appeal. One determination the claimant did not appeal was mailed on April 10, 2013 (reference 01). This determination held the claimant ineligible to receive benefits as of March 10, 2013, because she had requested and was granted a leave of absence. On May 1, 2013, another determination was issued (reference 02). This determination held the claimant eligible to receive benefits as of April 14, 2013, because she was then able to and available for work.

When the claimant received a determination that held her overpaid \$415.00, she accepted this and did not appeal. She contacted a representative and learned she did not have to pay back

the total amount right away. On May 29, 2013, another determination was mailed to the claimant, reference 04. This determination held the claimant overpaid \$415 for the week ending March 23, 2013, because of the April 10 determination that held she was not able to or available for work when she was on a leave of absence. The claimant agreed she has been overpaid \$415.00, but not \$830.00 in benefits.

Marzetti Frozen Pasta, Inc. reported paying the claimant gross wages of \$536.00 for the week ending March 16, 2013. The claimant does not agree that she received that amount because she was ill and unable to work on March 13 and 14.

The claimant does not remember when she received the May 7 determination that held her overpaid \$415.00. The claimant did not file appeal until after she received the second determination, May 29, that held her overpaid another \$415.00 for the week ending March 23, 2013. The claimant appealed on June 20, 2013, after she received a statement that indicated she owed the Department \$830.00 instead of just \$415.00.

REASONING AND CONCLUSIONS OF LAW:

The law states that 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 after the May 17, 2013 deadline for appealing expired. (This appeal was for the May 7 determination, reference 03.

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 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. The claimant did not appeal right away because she did not understand the consequences of the leave of absence she requested and had been granted. Failure to understand the legal consequences does not establish a legal excuse for filing a late appeal. The Appeals Section does not have any legal authority to make a decision on the merits of the appeal for the May 7 determination, reference 03.

If the Appeals Section had jurisdiction, the claimant would still be overpaid a total of \$830.00 in benefits she received for the weeks ending March 16 and 23, 2013, because of the leave of absence she requested and had been granted. The claimant did not establish that the wages Marzetti Frozen Pasta, Inc. reported she received were not correct. Even if the claimant had not received wages for the week ending March 16, she was not eligible to receive benefits for this week because she had requested and been granted a leave of absence. This made the claimant ineligible to receive benefits as of March 10, 2013. See determination dated April 10, 2013 (reference 01). Based on the April 10, 2013 determination, the claimant has been overpaid \$830.00 in benefits she received for the weeks ending March 16 and 23. She is required to repay this amount to the Department.

DECISION:

The representative's May 7, 2013 determination (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section

does not have jurisdiction to address the merits of the claimant's appeal. This means the May 7, 2013 determination cannot be changed and the claimant has been overpaid \$415.00 in benefits for the week ending March 16, 2013. She is required to repay this amount to the Department.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css