

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JONATHAN T URNESS**  
Claimant

**APPEAL 17A-UI-11435-CL-T**

**AMENDED ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/03/17  
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 filed an appeal from the October 26, 2017, (reference 04) unemployment insurance decision that found claimant overpaid unemployment insurance benefits in the amount of \$455.00 for the one week ending October 14, 2017. On November 30, 2017, a default decision was issued in the above referenced matter. Although the appellant had appealed, a phone hearing was scheduled, and the appellant responded to the hearing notice by providing the phone number at which he/a representative could be contacted to participate in a telephone hearing, the administrative law judge (ALJ) did not contact the claimant because of an error discovered after a default decision was mailed. As a result, no hearing was held and a decision was issued affirming the representative's decision based upon the administrative record. After discovering the error, the ALJ set aside the decision and reopened the record. A telephone hearing was then held on December 1, 2017, at 10:00 a.m. Claimant participated.

**ISSUE:**

Was the claimant overpaid for the time period in question?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on October 26, 2017. The deadline to file an appeal was November 5, 2017. The appellant did not receive the decision. The first notice of an issue with inadequate work searches was a fact finding interview that was held on October 24, 2017. After the fact finding interview, a November 3, 2017 (reference 03) decision was issued denying benefits for the week ending October 21, 2017, based on an inadequate work search. Claimant received the decision on November 5, 2017, and filed an appeal on November 7, 2017.

Claimant received a benefit payment in the amount of \$455.00 for the one week ending October 14, 2017. A reference 02 decision later determined claimant was ineligible for the

benefits due to an inadequate work search. That decision was affirmed in appeal number 17A-UI-11433-CL-T.

**REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 96.6(2) provides, in pertinent part:

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. . . . 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.

The appellant did not have an opportunity to appeal the fact-finder's 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 timely appealed the reference 03 decision, which was the first notice of ineligibility. The claimant filed an appeal within a reasonable period of time after discovering the ineligibility. Therefore, the appeal shall be accepted as timely.

The administrative law judge further concludes claimant has been overpaid benefits.

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 administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$455.00 pursuant to Iowa Code § 96.3(7) as the ineligibility decision that created the overpayment decision has been affirmed.

**DECISION:**

The October 26, 2017, (reference 04) unemployment insurance decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$455.00.

---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

cal/scn