

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT ACAREY
Claimant

APPEAL 21A-UI-20325-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/06/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On September 4, 2021, the claimant, Scott A. Carey, appealed the March 9, 2021, (reference 02) decision that concluded the claimant was overpaid regular unemployment insurance benefits in the amount of \$3,486.00 for the seven-week period ending January 23, 2021. A telephone hearing was held on November 8, 2021, pursuant to due notice and was consolidated with the hearing for 21A-UI-20326-AR-T. The claimant participated personally. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Is the claimant overpaid regular unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision finding claimant was overpaid regular unemployment insurance benefits was mailed to claimant on March 9, 2021. Claimant received the decision, though he could not remember when. He did not appeal the decision immediately because, in Iowa Workforce Development (IWD) correspondence dated April 7, 2021, he was notified that his claim had been redetermined and he had been found eligible for PEUC benefits. Later, in a decision dated August 24, 2021, claimant was notified of another overpayment of a different benefit. It was that decision that prompted claimant to appeal.

Claimant filed for and received regular unemployment insurance benefits in the gross amount of \$3,486.00 for the seven-week period ending January 23, 2021. On February 2, 2021, IWD issued a decision (reference 01) that disqualified claimant from receiving regular unemployment insurance benefits. That decision remains in effect. See 21A-UI-05442-ED-T.

The administrative record indicates that there is no outstanding overpayment amount of regular unemployment insurance benefits remaining, after the overpayment was offset by other benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dept of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dept of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal well before the time at which he ultimately filed his appeal. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

However, even if the appeal is timely, the administrative law judge concludes claimant has been overpaid benefits for the period in question.

Iowa Code section 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 regular unemployment insurance benefits in the amount of \$3,486.00 pursuant to Iowa Code section 96.3(7) as the disqualification decision that created the overpayment decision remains in effect.

DECISION:

The March 9, 2021, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Alexis D. Rowe
Administrative Law Judge

December 9, 2021
Decision Dated and Mailed

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