

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ZARKA DURATOVIC**  
Claimant

**APPEAL 18A-UI-08956-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 12/17/17  
Claimant: Appellant (1)**

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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 July 11, 2018, (reference 02), unemployment insurance decision that found claimant overpaid unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled to be held on September 13, 2018. Claimant participated.

**ISSUES:**

Is the appeal timely?  
Has the claimant been overpaid unemployment insurance benefits for the 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 July 11, 2018. The appellant did not receive the decision. The first notice of the overpayment was communication with IWD on August 21, 2018. The appeal was sent within ten days after that communication.

Claimant received unemployment insurance benefits in the gross amount of \$313.00 for the one week ending June 23, 2018. Claimant was found ineligible for benefits that week due to her lack of availability for work for the majority of the work week. That decision was affirmed in Appeal Number 18A-UI-08955-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 filed an appeal within a reasonable period of time after discovering the disqualification. 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 \$313.00, pursuant to Iowa Code § 96.3(7), as she was found ineligible for benefits during that week and that decision has been affirmed.

**DECISION:**

The July 11, 2018, (reference 02) unemployment insurance decision is affirmed. The appeal is timely. The claimant has been overpaid unemployment insurance benefits in the amount of \$313.00.

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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed

cal/scn