

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NELSON E RODRIGUEZ**  
Claimant

**APPEAL 18A-UI-10922-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/29/18**  
**Claimant: Appellant (2)**

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 August 28, 2018, (reference 03) unemployment insurance decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$502.00 for the one-week period ending August 18, 2018, as a result of a disqualification decision. A telephone hearing was scheduled and held on November 26, 2018, pursuant to due notice. The claimant, Nelson E. Rodriguez, participated. The administrative law judge took official notice of the administrative record. Spanish/English interpreter Abdul (ID number 11429) provided interpretation services for the hearing.

**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 overpayment issue in this case was created by the disqualification decision that has been modified in favor of claimant/appellant. See 18A-UI-10921-LJ-T.

The unemployment insurance decision was mailed to the appellant's address of record on August 27, 2018. The appellant did not receive the decision. The first notice of overpayment was communication with the agency when he was taking a class during late October. During this time, claimant learned that his claim was locked. He immediately went to his local office and filed an appeal.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes claimant has not been overpaid benefits for the period in question.

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:

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 appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely 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 appellant filed the appeal within one or two days of learning of the overpayment. 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 not been overpaid unemployment insurance benefits in the amount of \$502.00 pursuant to Iowa Code § 96.3(7), as the disqualification decision that created the overpayment decision has been modified in favor of claimant/appellant.

**DECISION:**

The August 28, 2018, (reference 03) unemployment insurance decision is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$502.00.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn