

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE S VALENTINE
Claimant

APPEAL NO: 12A-UI-09277-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 02/13/11
Claimant: Appellant (4/R)

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a July 19, 2012 determination (reference 03) that held her overpaid \$1468 in benefits she received for the weeks ending February 19 through April 16, 2011. The overpayment occurred as the result of an administrative law judge's April 25, 2011 decision that reversed an earlier determination that held the claimant eligible to receive benefits. The claimant participated in the hearing. Her witness was called, but was not available for the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant was overpaid \$1468, but the overpayment is waived.

ISSUES:

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

Has the claimant been overpaid benefits?

Is the claimant eligible for a waiver of the overpayment?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of February 13, 2011. She filed claims for the weeks ending February 19 through April 16, 2011. She received a total of \$1468 in benefits for these weeks.

The claimant participated at a fact-finding interview. The employer, Manpower Inc. of D M, was called for the fact-finding interview, but no one representing the employer participated in the fact-finding interview. The claimant did not willfully misrepresent the reasons for her employment separation. Based on information the claimant provided, a March 23, 2011 determination held the claimant qualified to receive benefits.

The employer appealed the March 23, 2011 determination. On April 25, 2011, an administrative law judge reversed the March 23 determination and disqualified the claimant from receiving

benefits as of February 13, 2011. See decision for appeal 11A-UI-03716-JTT. The claimant did not appeal this decision to the Employment Appeal Board

On July 19, 2012, a determination was mailed to the claimant informing her she had been overpaid \$1468 in benefits she received for the weeks ending February 19 through April 16, 2011, because an administrative law judge's April 25, 2011 decision had disqualified her from receiving benefits. The July 19, 2012 determination informed the claimant she had until July 29 to file an appeal or the overpayment determination became final.

The claimant does not regularly pick up her mail. She had not picked her mail up for about a week when she discovered the July 19 determination. The claimant does not know what date she actually picked up her mail and discovered the July 19 overpayment determination. The claimant dated her appeal letter on July 30, but she did not fax it to the Appeals Section until August 2, 2012.

After the claimant received the July 19 determination, she called and talked to a Workforce representative. The representative told the claimant she should go ahead and file her appeal since it was close to the deadline date.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination 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 appeal was filed after the July 30, 2012 deadline for appealing expired. Since July 29 was a Sunday, the deadline to appeal was automatically extended to Monday, July 30, 2012.

The next question is whether 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). While the claimant had no reason to know she would receive an overpayment determination, she was not away from her residence. She just did not pick up her mail for about a week. The claimant does not remember when she received the determination, but she dated her appeal letter on July 30. If the claimant had faxed or mailed her appeal on July 30, she would have filed a timely appeal. Instead, she filed her appeal late by faxing it on August 2, 2012.

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. Since the claimant did 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. In other words, the claimant is overpaid \$1468 in benefits she received for the weeks ending February 19 through April 25, 2011.

The July 2 determination did not address the waiver of overpayment issues, which the decision for appeal 11A-UI-03716-JTT instructed the Claims Division to do. As a result, the Appeals Section has jurisdiction to decide the issue of whether the claimant is eligible for a waiver of the overpayment.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7)b.

The law defines participation to mean the submission of detailed factual information that if not rebutted results in a decision favorable to the employer. 871 IAC 24.10(1). Even though the employer protested the claimant's receipt of benefits, the employer failed to submit detailed factual information concerning the reasons for her employment separation.

The \$1468 overpayment the claimant received was not the result of fraud or willful misrepresentation by the claimant. The employer failed to participate in the proceedings that led to the initial award of benefits. Therefore, recovery of the overpayment is waived.

DECISION:

The representative's July 19, 2012 determination (reference 03) is modified in the claimant's favor. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the determination that she has been overpaid \$1468 in benefits cannot be changed. Since the Department did not issue a decision on whether the claimant was eligible for a waiver of the overpayment as an administrative law judge directed the Department to do in the decision for appeal 11A-UI-03716-JTT, the Appeals Section has jurisdiction to address the waiver issue in this decision. The claimant is eligible for a waiver of the overpayment.

The matter of implementing this decision to adjust the overpayment amount to zero is **Remanded** to the Department.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw