

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK A HALLEM
Claimant

APPEAL NO. 17A-UI-03238-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/01/17
Claimant: Appellant (4)**

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 February 28, 2017 (reference 02), decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$1316.00 for the three week period ending January 21, 2017, as a result of a disqualification decision. An in-person hearing was held in Des Moines, Iowa, on March 22, 2017, related to the disqualification decision, and during that hearing claimant waived notice on the overpayment issue. The claimant participated.

ISSUE:

Is the appeal timely?
Is the claimant overpaid benefits?

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 a disqualification decision that has now been modified in favor of the appellant. (See 17A-UI-01583-LJ-T) Claimant did not initially file an appeal of the February 28, 2017 (reference 02) decision. It appears this delay in appealing was in part because he had another appeal pending and believed the overpayment would be addressed at the same time as that appeal.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant has been overpaid benefits for the period in question.

The first issue to be resolved is whether claimant filed a timely appeal. 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.

Here, claimant delayed in filing an appeal to the overpayment decision. He had another appeal pending at the time he received the overpayment decision, and claimant likely believed that the overpayment issue would be resolved at the same time as his pending appeal. While this was not an accurate belief, claimant has limited experience with Iowa Workforce Development and the unemployment system, and his confusion is understandable. The administrative law judge finds claimant's appeal to be timely.

The next issue to be resolved is whether 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) (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 \$1316.00 as stated by the representative's decision. However, claimant is overpaid \$840.00 pursuant to Iowa Code section 96.3(7) because the decision that created the overpayment decision has now been modified in favor of the appellant. See 17A-UI-01583-LJ-T.

DECISION:

The February 28, 2017 (reference 02) decision is modified in favor of claimant/appellant. The claimant has been overpaid unemployment insurance benefits in the gross amount of \$840.00 to which he was not entitled and those benefits must be recovered in accordance with Iowa law.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed