

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DULCE J BELLO
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-14121-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 2, 2021 (reference 03) unemployment insurance decision that found claimant was overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$6,540.00. The claimant was properly notified of the hearing. A telephone hearing was held on August 21, 2021. The claimant participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-14120-DB-T.

ISSUES:

Is the appeal timely?

Is the claimant overpaid regular unemployment insurance benefits from May 10, 2020 through August 1, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance benefits decision was issued on June 2, 2021 (reference 03) and mailed to the claimant's address of record. Claimant received the decision in the mail but she received it after the deadline to file an appeal due to post office delay. Claimant filed her appeal on June 15, 2021, which was the same day she received the decision.

Claimant received regular unemployment insurance benefits of \$6,540.00 for twelve weeks between May 10, 2020 and August 1, 2020. A decision was issued on September 17, 2020 (reference 02) that found the claimant was not eligible for benefits effective May 10, 2020 because she did not provide proof of citizenship or that she was legally authorized to work. An appeal to that decision was filed and an ALJ decision was issued in Appeal No. 21A-UI-14120-DB-T that affirmed the denial of benefits listed in the underlying decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the decision was received after the appeal deadline due to postal service delay. As such, the delay in the claimant filing the appeal was due delay by the United States postal services and the appeal shall be considered timely. The next issue is whether the claimant was overpaid regular unemployment insurance benefits funded by the State of Iowa. The administrative law judge finds that she was overpaid benefits.

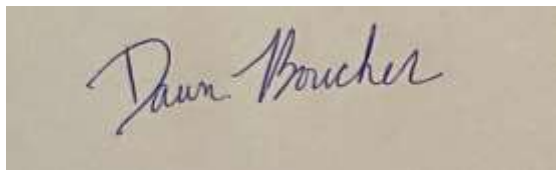
Iowa Code § 96.3(7)a provides:

- 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.

In this case, the claimant received regular unemployment insurance benefits funded by the State of Iowa but was not eligible for those benefits as determined in Appeal No. 21A-UI-14120-DB-T. As such, the claimant is overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$6,540.00 for twelve weeks between May 10, 2020 and August 1, 2020.

DECISION:

The appeal shall be considered timely. The June 2, 2021 (reference 03) decision is affirmed. Claimant has been overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$6,540.00 for twelve weeks between May 10, 2020 and August 1, 2020. Those benefits must be repaid to the agency.



Dawn Boucher
Administrative Law Judge

August 26, 2021
Decision Dated and Mailed

db/ol