

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRISHA B DEVORE
Claimant

APPEAL NO: 15A-UI-01123-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/09/08
Claimant: Appellant (1)**

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed from a May 1, 2014 billing that stated she owed the Department money. The billing was based on a March 11, 2009 overpayment determination (reference 03). The claimant participated at the February 26 hearing. Anthony Sehleisman, her provider since October 2014 testified on the claimant's behalf. Based on the evidence, the administrative law judge concludes the claimant has not filed a timely appeal so the Appeals Bureau does not have any legal jurisdiction to address the merits of her appeal.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week on November 9, 2008. A March 11, 2009 determination held the claimant overpaid \$1251 in benefits she received from November 15, 2008, through January 10, 2009. The overpayment occurred as a result of the claimant's employment separation from Optima LifeServices. The claimant does not remember receiving the March, 2009 overpayment determination. The claimant has been on disability since 2009.

The Department mailed the claimant billing statements on April 1, 2010, April 1, 2011, April 1, 2012, May 1, 2013 and May 1, 2014. The claimant put the paperwork in boxes.

In October 2014, Sehleisman became her provider and started looking at the paperwork she had put in boxes. He discovered the May 1, 2014 overpayment billing. The claimant appealed the May 1, 2014 billing on December 17, 2014.

The administrative record indicates the overpayment occurred as the result of a determination issued in January 2009 that disqualified her from receiving benefits based on the reasons for

her employment separation from Optima LifeServices. The claimant appealed that decision. After a hearing was held, an administrative law judge concluded the claimant was not qualified to receive benefits as of November 9, 2008. See decision for appeal 09A-UI-01062.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the decision 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 claimant appealed the March 11, 2009 overpayment determination over five years after the deadline for appealing expired.

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. While I understand the claimant has a disability, she did not establish a legal excuse for filing a late appeal from a March 2009 overpayment determination. The Appeals Bureau does not have any legal authority to make a decision on the merits of the appeal.

In the alternative, if the claimant has a legal excuse for filing a late appeal, the decision for 09A-UI-01062 disqualified the claimant from receiving benefits as of November 9, 2008. If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on the decision for appeal 09A-UI-01062, the claimant has been overpaid benefits she received since November 9, 2008. She was overpaid \$1251 in benefits.

DECISION:

The March 11, 2009 representative's determination (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The claimant has been overpaid \$1251 in benefits she received between November 9, 2008, and January 10, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs