

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERLENE M HOLSTE
Claimant

APPEAL 21A-UI-14889-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/05/20
Claimant: Appellant (2)

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 March 31, 2021 (reference 02) unemployment insurance decision that found the claimant was overpaid regular unemployment insurance benefits. The claimant was properly notified of the hearing. A telephone hearing was held on August 25, 2021. The claimant participated personally. The administrative law judge took official notice of the claimant's administrative records. The hearing was consolidated with Appeal No. 21A-UI-14888-DB-T and 21A-UI-14889-DB-T.

ISSUES:

Was the appeal timely?
Was the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance benefits decision was mailed to the claimant's correct address of record on March 31, 2021 (reference 02) that found she was overpaid regular unemployment insurance benefits funded by the State of Iowa. Claimant received the decision in the mail on an unknown date. On August 14, 2020, the employer had originally sent an email on her behalf to Iowa Workforce Development (IWD) intending to appeal the August 11, 2020 (reference 01) decision the claimant had received that denied her benefits. The employer contacted IWD on the claimant's behalf on numerous occasions after it did not receive a response email back from its' August 14, 2020 email and was told by various IWD representatives that the matter had been taken care of or fixed. On or about June 25, 2021, the employer was told by an IWD that the claimant needed to file an appeal to get the matter fixed. An appeal was filed by the claimant, with the employer's assistance, on June 26, 2021.

Claimant had received regular unemployment insurance benefits of \$3,448.00 for eight weeks between April 5, 2020 and May 30, 2020 when the claimant was laid off from work. The unemployment insurance decision was issued on August 11, 2020 (reference 01) that found she was not eligible for benefits was reversed in Appeal No. 21A-UI-14888-DB-T. The overpayment

issue in this case was created by that disqualification decision that has been reversed on appeal.

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; however, the claimant, through her employer, contacted IWD prior to the appeal deadline and was given incorrect information that the matter was taken care of. As such, the delay in the claimant filing the appeal was due to division error or misinformation and the appeal shall be considered timely.

The next issue is whether the claimant was overpaid regular unemployment insurance benefits from April 5, 2020 through May 30, 2020. The administrative law judge finds that she was not overpaid benefits.

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

Iowa Code § 96.3(7)a provides:

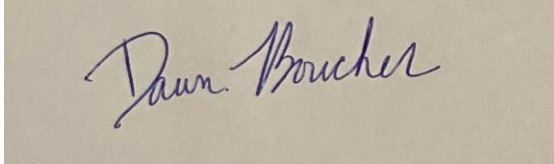
7. Recovery of overpayment of benefits.

- 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.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits funded by the State of Iowa in the amount of \$3,448.00 for the eight-week period between April 5, 2020 and May 30, 2020 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment has been reversed. See Appeal No. 21A-UI-14887-DB-T.

DECISION:

The appeal is timely. The March 31, 2021 (reference 02) unemployment insurance decision is reversed. The claimant has not been overpaid unemployment insurance benefits funded by the State of Iowa in the amount of \$3,448.00 for the eight-week period between April 5, 2020 and May 30, 2020 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment has been reversed.



Dawn Boucher
Administrative Law Judge

August 31, 2021
Decision Dated and Mailed

db/mh