

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANY J MCKINNEY
Claimant

APPEAL 22A-UI-10664-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/14/21
Claimant: Appellant (1-R)**

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

STATEMENT OF THE CASE:

On April 27, 2022, claimant Tiffany J. McKinney filed an appeal from the April 7, 2022 (reference 02) unemployment insurance decision that found the claimant overpaid \$3,870.00 in regular unemployment insurance benefits for the ten-week period between March 14, 2021 and May 22, 2021. A telephonic hearing was held at 10:00 a.m. on Tuesday, June 14, 2022. Appeal numbers 22A-UI-10663-LJ-T, 22A-UI-10664-LJ-T, and 22A-UI-10665-LJ-T were heard together and created one record. The claimant, Tiffany J. McKinney, participated. The employer, Thomas L. Cardella & Associates, Inc., did not appear for the hearing and did not participate. Department's Exhibits D-1, D-2, D-3, and D-4 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant overpaid regular unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision stating claimant was ineligible for benefits because she was on a leave of absence was mailed to her last known address of record on May 27, 2021. She did receive the decision within ten days, in late May 2021. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay."

The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 6, 2021. The appeal was not filed until April 27, 2022, which is after the date noticed on the disqualification decision. Claimant explained that she was busy recovering from all of the complications she experienced after her surgery and working on returning to work, and she did not file an appeal in May 2021. She simply stopped filing for benefits.

Next, two decisions stating claimant was overpaid benefits because of her ineligibility for benefits were mailed to her last known address of record on April 7, 2022. Claimant did not receive these decisions in a timely manner because they were mistakenly delivered to her downstairs neighbor. She testified that she obtained the two decisions from her neighbor and filed her appeal the same day.

Claimant filed for and has received regular unemployment insurance benefits in the gross amount of \$3,870.00 for ten-week period ending May 22, 2021. Claimant also filed for and received FPUC benefits in the gross amount of \$3,000.00 for the same ten-week period. On May 27, 2021, Iowa Workforce Development (IWD) issued a decision (reference 01) that disqualified claimant from receiving regular unemployment insurance benefits. That decision has been affirmed. See 22A-UI-10663-LJ-T.

Claimant filed two applications for Pandemic Unemployment Assistance (“PUA”) benefits on March 16, 2021 (submission ID numbers 1098861 and 1096246). Iowa Workforce Development has not processed these applications or determined claimant’s eligibility for PUA benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant has been overpaid regular unemployment insurance benefits.

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Here, the claimant did not have an opportunity to appeal the fact-finder's decision prior to the deadline because the decision was not received prior to the deadline. Without notice of the overpayment, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the overpayment. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant has been overpaid. 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 been overpaid regular unemployment insurance benefits in the amount of \$3,870.00. That amount must be repaid to the agency.

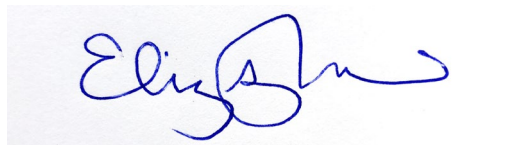
The information in claimant's PUA applications indicates she may be eligible for PUA benefits. This matter will be remanded so those applications can be processed.

DECISION:

The April 7, 2022 (reference 02) unemployment insurance decision is affirmed. Claimant has been overpaid regular unemployment insurance benefits, and those benefits must be repaid.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development to review claimant's March 16, 2021 PUA applications and issue a decision on claimant's eligibility for PUA benefits. If claimant is found eligible for PUA benefits for the weeks that she has been found ineligible for regular unemployment insurance benefits, any available PUA benefits should be applied to the overpayment of regular unemployment insurance benefits.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 22, 2022
Decision Dated and Mailed

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