

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIE J ALFORD
Claimant

APPEAL 17A-UI-06281-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/04/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 25, 2017, (reference 03) unemployment insurance decision that denied benefits. The claimant was properly notified about the hearing. A telephone hearing was held on July 7, 2017. The claimant participated personally. Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents and KCCO. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?
Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An initial unemployment insurance decision of overpayment in benefits was mailed to the claimant's last known address of record on May 25, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 4, 2017. Because June 4, 2017 was a Sunday, the final day to appeal was extended to Monday, June 5, 2017.

The claimant has lived at the address of record for one year and shares the mail with four other people. He generally does not check his mail unless it is from his employer. The claimant was out of town from May 24 through 29, 2017 for his daughter's graduation, which coincided with the period to appeal. The claimant denied receipt of the initial decision stating he had been overpaid benefits.

According to the claimant, his debit card containing his unemployment insurance benefits was denied, which triggered his inquiry of benefits not being paid. The claimant does not know when the card was denied, or when he made two efforts to contact Iowa Workforce Development. Specific details were not provided on the calls to IWD or any guidance offered. However, the claimant then received a notice of overpayment, dated June 16, 2017, and filed his appeal online effective June 20, 2017 (Department Exhibit D-2).

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 4, 2016. The claimant filed for and received a total of \$1,020.00 in unemployment insurance benefits for the weeks between April 16, 2017 and May 19, 2017. The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits for the period April 16, 2017 through May 19, 2017 has been affirmed in a decision of the administrative law judge in appeal 17A-UI-06280-JC-T.

REASONINGS AND CONCLUSIONS OF LAW:

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

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.

In this case, the claimant denied receipt of the initial decision dated May 25 2017, which concluded he was overpaid benefits. The claimant stated the first documentation he received from IWD alerting him was the statement of overpayment dated June 16, 2017. The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not

received. Without notice of a disqualification, 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 then filed his appeal online on June 20, 2017 (Department Exhibit D-2). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The issue in this case is whether the claimant was overpaid unemployment insurance 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.

Since the decision disqualifying the claimant has been affirmed the claimant was overpaid \$1,020.00 in unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated May 25, 2017, reference 03, is affirmed. The claimant filed a timely appeal. The claimant was overpaid \$1,020.00 in unemployment insurance benefits, which must be repaid.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn