

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEXANDRO MEDINA
Claimant

APPEAL 16A-UI-12592-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 08/21/16
Claimant: Appellant (2)**

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 October 27, 2016, (reference 07), unemployment insurance decision that found claimant overpaid benefits. After due notice was issued, a telephone conference hearing was scheduled to be held on December 12, 2016. Claimant participated. Official notice is taken of the appeal letter.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on October 27, 2016. The appellant did not receive the decision. The first notice of the overpayment decision was when claimant received a billing statement that was sent to him on November 16, 2016. Claimant filed his appeal on November 21, 2016.

The overpayment decision is based on a decision finding claimant was not able to work effective August 21, 2016. However, a new decision has been issued (16A-UI-12591-CL-T) finding claimant able to work effective his original claim date of August 21, 2016.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides, in pertinent part:

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. . . . 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.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a decision, 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 timely appealed after receiving the billing statement, which was his first notice of the overpayment decision. Therefore, the appeal shall be accepted as timely.

The administrative law judge further concludes claimant has not been overpaid 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.

b. (1) 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 § 96.8, subsection 5. . . .

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$3840.00 pursuant to Iowa Code § 96.3(7) as a new decision has been issued (16A-UI-12591-CL-T) finding claimant able to work effective his original claim date of August 21, 2016.

DECISION:

The appeal is timely. The October 27, 2016, (reference 07) unemployment insurance decision is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$3840.00.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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