

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EVARISTE M TSHIMANGA
Claimant

APPEAL 17A-UI-01961-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/30/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 29, 2016, (reference 10) unemployment insurance decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$966.00 for the two-week period ending November 12, 2016, as a result of a disqualification decision. Due notice was issued for a hearing to be held by telephone conference call on March 14, 2017, at 10:00 a.m. On March 14, 2017, a hearing was held by telephone conference call. The hearing began on March 14, 2017 at 9:00 a.m. On March 14, 2017, claimant waived proper notice for the hearing so the hearing could proceed one hour earlier than the notice provided. Claimant participated. CTS Language Link interpreter ID number 10686 interpreted on claimant's behalf. Michee Tshimanga was present on claimant's behalf, but did not testify. Official notice was taken of the administrative record of claimant's benefit payment history, with no objection.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An overpayment unemployment insurance decision was mailed to the claimant's last-known address of record on December 29, 2016. Claimant has been at the address of record since September 2016. Claimant received the decision but he does not recall when he received the decision. Prior to receiving the overpayment decision, claimant had filed for and received two weeks of unemployment insurance benefits. After claimant received unemployment insurance benefits for the first two weeks, he stopped receiving benefits. Claimant contacted Iowa Workforce Development because he had stopped receiving benefits. Claimant was instructed that he needed to attend classes to be eligible for unemployment insurance benefits. Claimant then attended the classes, but he still did not receive the benefits. Claimant then received the overpayment decision. Claimant called Iowa Workforce Development after he received the decision to discuss the decision. Claimant also wrote a written statement to Iowa Workforce Development that he did not have the money to pay for the overpayment. The decision

contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 8, 2017; however, January 8, 2017 was a Sunday, so claimant had until January 9, 2017. The appeal was not filed until January 30, 2017, which is after the date noticed on the unemployment insurance decision.

The overpayment issue in this case was created by a disqualification decision that has been affirmed in appeal number 16A-UI-13280-JP-T. Claimant received benefits in the gross amount of \$966.00.

REASONING 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.

Claimant's failure to file an appeal within the appeal period was due to information provided initially when he stopped receiving benefits; claimant was told he had to attend classes and then he would receive benefits. After claimant received the unemployment insurance decision that concluded he was overpaid benefits he contacted Iowa Workforce Development. Claimant then filed this appeal. Claimant's delay in filing an appeal in part due to Iowa Workforce Development instructing claimant all he had to do was attend classes to resume receiving benefits. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant was overpaid benefits. The administrative law judge concludes claimant has been overpaid benefits for the period in question.

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 unemployment insurance benefits in the amount of \$966.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been affirmed in appeal number 16A-UI-13280-JP-T.

DECISION:

The December 29, 2016, (reference 10) unemployment insurance decision is affirmed. Claimant's appeal is considered timely. Claimant has been overpaid unemployment insurance benefits in the gross amount of \$966.00 to which he was not entitled and those benefits must be recovered in accordance with Iowa law.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs