

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMADOU A ABOU
Claimant

APPEAL 17A-UI-04862-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/18/16
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 28, 2017, (reference 03), unemployment insurance decision that found the claimant overpaid unemployment insurance benefits of \$2,681.00 based upon not being able to or available for work. After due notice was issued, a telephone conference hearing was scheduled to be held on May 24, 2017. Claimant participated through CTS Language Link French language interpreter and was represented by Lorraine Gaynor, Attorney at Law. Law student Charles Paul observed. Department's Exhibit D-1 was received.

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 decision denying benefits was mailed to claimant at the last known address of record on February 8, 2017, which he received on February 14, 2017. The stated deadline for appeal is February 18, 2017. He appealed May 8, 2017, at the Iowa City IWD office. He called customer service on February 17, 2017, and told the representative he was waiting for an answer about the reference 01 separation decision. They did not tell him he must appeal if he disagrees to get benefits started again, but told him his benefits would start again the next week. He went to the Iowa City IWD office the same day he received the decision ("letter") on May 8, 2017. There are no French instructions on either side of the unemployment insurance decision. He did not understand the word "appeal" or the information related to that. He told the fact-finding interviewer that he is not going to school.

Claimant received unemployment insurance benefits of \$2,681.00 for the six weeks ending February 4, 2017. The overpayment issue in this case was created by the ineligibility decision that has been reversed.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

The administrative law judge concludes that the failure to file an appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay pursuant to Iowa Admin. Code r. 871-24.35(2). Thus, the appeal is accepted as timely.

The administrative law judge concludes claimant has not been overpaid benefits for the period in question.

Iowa Code section 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 not been overpaid unemployment insurance benefits in the amount of \$2,681.00 pursuant to Iowa Code section 96.3(7) as the ineligibility decision that created the overpayment decision has been reversed.

DECISION:

The February 28, 2017, (reference 03) unemployment insurance decision is reversed. The claimant's appeal is timely. The claimant has not been overpaid unemployment insurance benefits in the amount of \$2,681.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs