

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CODY J LUTZEN
Claimant

APPEAL 17A-UI-11577-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/09/17
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/appellant filed an appeal from the October 10, 2017 (reference 06) unemployment insurance decision that found claimant was overpaid benefits in the amount of \$237.00 for one week between September 17, 2017 and September 23, 2017. The claimant was properly notified of the hearing. A telephone hearing was held on December 1, 2017. The claimant, Cody J. Lutzen, participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant received benefits in the amount of \$237.00 for one week between September 17, 2017 and September 23, 2017. The overpayment issue in this case was created by a disqualification decision that has been reversed.

The claimant reported he was not able to and available for work when filing his weekly continued claim for the benefit week ending September 23, 2017. He reported this incorrectly, as he was able to and available for work for benefit week ending September 23, 2017.

Claimant did not receive the decision stating that he was overpaid benefits because he had moved and did not receive any forwarded mail. Claimant learned that the decision finding he was overpaid benefits existed when he contacted Iowa Workforce Development by telephone approximately two weeks after not receiving benefits. He filed an appeal on November 13, 2017, which was either the day or day after he learned that the decision existed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

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. Iowa Code § 96.6(2). The Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant never received the decision and filed an appeal within 48 hours of learning the decision existed. Therefore, the appeal shall be accepted as timely.

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 of \$237.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been reversed.

DECISION:

The claimant filed a timely appeal. The October 10, 2017 (reference 06) unemployment insurance decision is reversed. The claimant has not been overpaid unemployment insurance benefits of \$237.00 for one week between September 17, 2017 and September 23, 2017.

Dawn R. Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs