

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RICHARD E MOORE
Claimant

APPEAL NO: 11A-UI-03257-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROQUETTE AMERICA INC
Employer

OC: 09/026/10
Claimant: Appellant (1)

871 IAC 24.13(2)a – Holiday Pay
Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 4, 2011 determination (reference 03) that held him overpaid \$167.00 in benefits he received for the week ending November 13 because he did not report holiday pay he received for Veterans Day. The claimant participated in the hearing. Hiliary Carter, a human resource staffing specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Was the claimant overpaid \$167.00 in benefits for the week ending November 13 because he did not report his Veterans Day holiday pay?

FINDINGS OF FACT:

As the result of a labor dispute, the claimant became unemployed when he was locked out of work on September 28, 2010. He established a claim for benefits during the week of September 26, 2010. In accordance with the union contract the claimant receives holiday pay even when he is locked out. In the contract, Veterans Day is noted as a holiday.

The employer paid the claimant \$179.36 in holiday pay for Veterans Day in a check issued on November 19. The claimant did not know he would receive the vacation payment during the lockout. The check was sent to the union and the claimant did not know he had actually received any money for holiday pay until mid-March 2011. The claimant does not have his checks directly deposited into his bank account.

When the claimant filed his weekly claim for week ending November 13 he did not report any holiday pay. He received his maximum weekly benefit amount of \$390.00 this week.

On March 4, a representative's determination was mailed to the claimant and employer indicating the claimant had been overpaid \$167.00 in benefits for the week ending November 13 because he had not reported his holiday pay for Veterans Day. The claimant was out of state in early March and did not return until March 12. The claimant did not read the determination until March 13 or 14, Sunday or Monday.

On March 14, the claimant went to visit his nephew who was in the hospital in Iowa City. While at the hospital, the claimant called his union representative to find out what the determination was about. At this time, the claimant did not even know he had the vacation check waiting for him to cash. The union representative advised him to contact his local Workforce office. The claimant called his Workforce office that same day. The local Workforce representative understood the claimant was visiting his nephew at the hospital and told him to come to the office as soon as possible. The claimant went to his local Workforce office on March 16 and filed his appeal.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the March 14 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal because he did not know about the determination until March 13 or 14. Since he contacted his local Workforce office on March 14 and was not advised to file an appeal immediately, the claimant established a legal excuse for filing a late appeal. The claimant's failure to file a timely appeal was due to an Agency error or misinformation, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

871 IAC 24.13(2)a provides that holiday pay is considered a wage and is deductible from a claimant's weekly benefit amount just as wages are in 871 IAC 24.18. Since the union contract specifically states employees receive holiday pay for Veterans Day and various other days, the claimant knew or should have known he would receive this holiday payment. Therefore, he is required to report holiday pay during the week in which the holiday occurred, not when paid. Holiday pay is treated no differently than wages. Wages are to be reported during the week earned, not paid. If holiday pay is not paid by the employer, the claimant may request an underpayment adjustment from the department. 871 IAC 24.13(2).

Since the claimant did not report the Veterans Day holiday pay during the week ending November 13, he has been overpaid \$167.00 in benefits for this week. The administrative

record indicates the Department used benefits the claimant was legally entitled to receive during the week ending March 5 to offset this overpayment. Therefore, the claimant does not owe the Department any money for the week ending November 13, 2010.

DECISION:

The representative's March 4, 2011 (reference 03) is affirmed. The claimant filed a late appeal, but established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant should have reported the Veterans Day holiday pay of \$180.00 during the week ending November 13, 2010. Since he did not, he was overpaid \$167.00 in benefits for this week. The Department has already recouped the overpayment from benefits the claimant was entitled to receive during the week ending March 5. Therefore, the claimant does not owe the Department any money.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css