

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT D RICHTER
Claimant

APPEAL 18A-UI-12328-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 10/07/18
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 21, 2018 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing was held on January 14, 2019. The claimant, Scott D. Richter, participated personally. Kevan Irvine participated on behalf of IWD. IWD Exhibits 1 – 7 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant ineligible for benefits due to an outstanding fraud overpayment balance?

FINDINGS OF FACT:

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

A decision dated November 21, 2018 (reference 04) was mailed to the claimant at his address of record. However, the claimant did not receive a copy of the decision in the mail advising him that he was not eligible for benefits due to an outstanding fraud overpayment balance. Claimant did not realize that this decision finding him ineligible existed until he telephoned a representative at Iowa Workforce Development to determine why funds were not being deposited to his debit card. Approximately one to two days later, claimant filed his appeal online. Claimant’s appeal was filed December 26, 2018.

The claimant had filed a claim for unemployment insurance benefits with an effective date of September 24, 2017. During that claim year, a decision was issued on April 19, 2018, which found that the claimant was overpaid benefits of \$8,607.00, including a 15% penalty due to misrepresentation. Claimant filed an appeal to that decision and the decision was affirmed in Appeal No. 19A-UI-00330. To date, claimant has failed to pay the outstanding overpayment amount owed, including the 15% penalty. The current outstanding balance owed is \$9,898.05. See Exhibit 2.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant filed a timely appeal but is not eligible for benefits until the balance of the benefits received by the claimant due to misrepresentation, including all penalties, are paid in full. Benefits are denied at this time.

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.

The law provides that all interested parties have ten days from the date of mailing of a decision to file an appeal. Iowa Code § 96.6(2). In addressing an issue of timeliness of an appeal under that portion of this Code section, 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).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the decision was mailed to claimant at his correct address of record but was never received by the claimant. The claimant did not have an opportunity to appeal the decision because the decision was never received. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal within two days after he learned the disqualification decision existed. Claimant has established that the delay in filing a timely appeal was due to the action of the United States postal service in failing to deliver the decision to claimant in the mail. As such, the claimant's appeal shall be accepted as timely.

Iowa Code section 96.5(13) provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

Claimant currently owes a balance of \$9,898.05 due to a decision issued on April 19, 2018 which found that the claimant failed to report wages earned, resulting in determination that the claimant engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud balance remains unpaid, claimant is not eligible for benefits at this time. See Iowa Code § 96.5(13).

DECISION:

The claimant filed a timely appeal. The November 21, 2018 (reference 04) unemployment insurance decision is affirmed. The claimant is not eligible for benefits. Benefits are withheld until the claimant has paid the unpaid fraud overpayment balance, plus penalties, and provided claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs