

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JULIANNE X WIRTJES
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**APPEAL 21A-UI-05065-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/03/20
Claimant: Appellant (4)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On February 6, 2021, Julianne Wirtjes (claimant/appellant) filed an appeal from the January 25, 2021 (reference 04) unemployment insurance decision that determined claimant had been overpaid benefits in the amount of \$4,885.00 for the ten weeks between May 3 and July 11, 2020, based on a disqualification decision.

A telephone hearing was held on April 16, 2021. The parties were properly notified of the hearing. Claimant participated personally. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the claimant overpaid benefits?

FINDINGS OF FACT:

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

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$500.00 for a total of nine weeks, from the benefit week ending May 9, 2020 and continuing through the benefit week ending July 4, 2020. Claimant also received benefits in the amount of \$385.00 for the benefit week ending July 11, 2020. The total amount of benefits paid to date is \$4,885.00.

Claimant was subsequently determined to be ineligible disqualified from benefits during that period in decisions dated July 17, 2020. Those decisions have now been modified and reversed and benefits allowed from the benefit week ending May 23, 2020 through the benefit week ending July 11, 2020. See 21A-UI-05062-AD-T and 21A-UI-05032-AD-T.

The Unemployment Insurance Decision was mailed to claimant at the above address on January 25, 2021. That was claimant's correct address. However, claimant did not receive the decision until after February 4, 2021. Claimant filed the appeal shortly after receiving the decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The January 25, 2021 (reference 04) unemployment insurance decision that determined claimant had been overpaid benefits in the amount of \$4,885.00 for the ten weeks between May 3 and July 11, 2020, based on a disqualification decision is MODIFIED in favor of appellant. Claimant has been overpaid benefits in the amount of \$1,000.00 rather than \$4,885.00.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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 Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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.”

The administrative law judge finds claimant did not have a reasonable opportunity to file a timely appeal. This is because claimant did not receive the decision until after February 4, 2021. Claimant filed the appeal shortly after receiving the decision. The appeal is therefore timely and the administrative law judge has jurisdiction to address the underlying issues.

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.

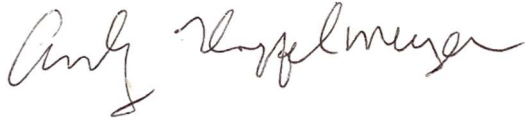
The unemployment insurance system shows claimant has received weekly benefits in the amount of \$500.00 for a total of nine weeks, from the benefit week ending May 9, 2020 and continuing through the benefit week ending July 4, 2020. Claimant also received benefits in the amount of \$385.00 for the benefit week ending July 11, 2020. The total amount of benefits paid to date is \$4,885.00.

Claimant was subsequently determined to be ineligible disqualified from benefits during that period in decisions dated July 17, 2020. Those decisions have now been modified and reversed and benefits allowed from the benefit week ending May 23, 2020 through the benefit week ending July 11, 2020. See 21A-UI-05062-AD-T and 21A-UI-05032-AD-T.

Because claimant received benefits totaling \$1,000.00 for the weeks ending May 9 and 16, 2020 and was subsequently determined to be disqualified from benefits during that period, she has been overpaid benefits in that amount.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The January 25, 2021 (reference 04) unemployment insurance decision that determined claimant had been overpaid benefits in the amount of \$4,885.00 for the ten weeks between May 3 and July 11, 2020, based on a disqualification decision is MODIFIED in favor of appellant. Claimant has been overpaid benefits in the amount of \$1,000.00 rather than \$4,885.00.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

April 26, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.