

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

BRANDON D SIMMERMAN  
6705 COUNTRY HILL RD APT #1  
CEDAR RAPIDS IA 52402

IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT

Appeal Number: 04A-UI-09403-DWT  
OC: 08/01/04 R: 03  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.3-7 – Recovery of Overpayment of Benefits  
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Brandon D. Simmerman (claimant) appealed a representative's August 19, 2004 decision (reference 03) that concluded he had been overpaid \$471.00 in benefits he received for the weeks ending August 7 and 14, 2004. The overpayment occurred as the result of another decision that concluded the claimant was not eligible to receive benefits as of August 1, 2004. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on September 24, 2004. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the claimant been overpaid any benefits for the weeks ending August 7 and 14, 2004?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of August 1, 2004. The claimant filed claims for the weeks ending August 7 and 14, 2004. He received a total of \$471.00 in benefits for these weeks. Prior to September 24, 2004, the Department cancelled the benefits that had been previously issued to the claimant for these weeks. This left an overpayment of \$23.55 or the amount of taxes that had been forwarded to the government on the claimant's behalf.

The claimant appealed the representative's decision that concluded he was not eligible to receive benefits as of August 1, 2004 because he was not able to or available for work. This decision has been modified in the claimant's favor. See decision for appeal 04A-UI-09402-DWT. The claimant is eligible to receive unemployment insurance benefits as of August 1, but is not eligible as of August 15, 2004.

On August 19, 2004, a representative's decision was mailed to the claimant. This decision indicated the claimant had been overpaid \$471.00 in benefits he received for the weeks ending August 7 and 14, 2004.

The claimant received this decision on August 25 or 26, 2004. He was staying with his parents while recuperating from the surgery. His parents live in a rural community. On August 28, 2004, the claimant went to the town's post office, bought stamps and mailed his appeal letter. The postmark on the appeal's letter envelope is August 31 from Cedar Rapids, Iowa.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision 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 facts establish the claimant filed his appeal on August 28 or within the deadline to appeal. Therefore, the claimant filed a timely appeal.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. Based on the decision for appeal 04A-UI-09402-DWT, the claimant is legally entitled to receive unemployment insurance benefits for the weeks ending August 7 and 14, 2004. He has not been overpaid \$23.55, instead, the Department shall reissue the benefit amount the claimant is legally entitled to receive for these weeks.

DECISION:

The representative's August 19, 2004 decision (reference 03) is reversed. The claimant filed a timely appeal because he mailed it at a post office on August 28, 2004. Therefore, the Appeals Section has jurisdiction to address the merits of his appeal. The claimant is legally entitled to receive unemployment insurance benefits during the weeks ending August 7 and 14, 2004. He has not been overpaid \$23.55. The Department shall reissue the benefits that had been previously cancelled and send them to the claimant.

dlw/b