

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GINA ROBINSON
Claimant

APPEAL 21A-UI-14629-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 10/25/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 11, 2021 (reference 04) unemployment insurance decision that found claimant was overpaid regular unemployment benefits funded by the State of Iowa in the amount of \$5,000.01 for twelve weeks between October 25, 2020 and January 16, 2021. The claimant was properly notified of the hearing. A telephone hearing was held on August 23, 2021. The claimant participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-14628-DB-T and 21A-UI-14631-DB-T.

ISSUES:

Is the appeal timely?

Is the claimant overpaid regular unemployment insurance benefits funded by the State of Iowa from October 25, 2020 through January 16, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision dated June 11, 2021 (reference 04) was mailed to the claimant's correct address of record. The claimant received it in the mail. The decision stated that an appeal must be postmarked by June 24, 2021, however, the appeal instructions that are typically on the back of the decision were not and only a blank sheet of paper was on the back of the decision. Claimant attempted to contact Iowa Workforce Development and was told by one representative that they could not help her. Another representative told the claimant the website for which she could file an appeal. Claimant filed an appeal immediately on June 27, 2021.

Claimant filed an original claim for unemployment insurance benefits effective October 25, 2020. She was paid unemployment insurance benefits funded by the State of Iowa in the amount of \$5,000.01 for twelve weeks between October 25, 2020 and January 16, 2021. A decision that disqualified her from being eligible for regular unemployment insurance benefits funded by the State of Iowa was issued on January 22, 2021 (reference 03) and it found that she had not been paid insured wages of at least eight times her weekly benefit amount of her previous claim to be

eligible for benefits in a subsequent benefit year. That decision was affirmed in Appeal No. 21A-UI-14628-DB-T.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 claimant received the decision; however, no appeal instructions were listed on the back of the decision. When she contacted Iowa Workforce Development on the first occasion she was told the representative could not help her. She filed her appeal immediately after receiving the appeal instructions from the second Iowa Workforce Development representative that she spoke to. As such, the delay in her filing an appeal was due to division error or misinformation and her appeal shall be considered timely pursuant to Iowa Admin. Code r. 871-24.35(2). The next issue is whether the claimant is overpaid regular benefits. The administrative law judge finds that she is.

Iowa Code § 96.3(7)a provides:

7. Recovery of overpayment of benefits.

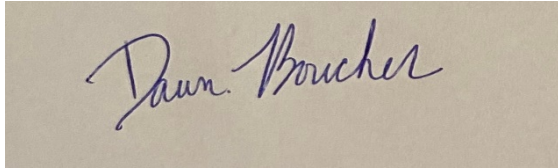
- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, **even though the individual acts in good faith and is not otherwise at fault**, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either 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.

(emphasis added).

In this case, the claimant received regular unemployment insurance benefits funded by the State of Iowa from October 25, 2020 through January 16, 2021 but was not eligible for those benefits in a second claim year. This was because of the January 22, 2021 (reference 03) decision that disqualified her from being eligible for regular unemployment insurance benefits funded by the State of Iowa. That decision was affirmed in Appeal No. 21A-UI-146281-DB-T. As such, even though the claimant acted in good faith and was not otherwise at fault, she has still been overpaid unemployment insurance benefits funded by the State of Iowa in the amount of \$5,000.01 for twelve weeks between October 25, 2020 and January 16, 2021 which must be repaid to the agency.

DECISION:

The appeal is timely. The June 11, 2021 (reference 04) unemployment insurance decision is affirmed. The claimant was overpaid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$5,000.01 for twelve weeks between October 25, 2020 and January 16, 2021.



Dawn Boucher
Administrative Law Judge

August 27, 2021
Decision Dated and Mailed

db/scn