

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON J FENZEL
Claimant

APPEAL NO: 10A-UI-08960-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/28/08
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a representative's June 4, 2010 decision (reference 06) that held he had been overpaid \$3,928.00 in Emergency Unemployment Compensation benefits he received for the weeks ending January 2 through May 8, 2010. The overpayment occurred as the result of a June 1, 2010 decision that held he was not eligible receive Emergency Unemployment Compensation benefits as of December 27, 2009, because he was monetarily eligible to receive regular unemployment insurance benefits instead. A telephone hearing was held on August 10, 2010. 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 legal excuse for filing a late appeal?

Has the claimant been overpaid \$3,928.00 in Emergency Unemployment Compensation benefits he received for the weeks ending January 2 through May 8, 2010?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of December 28, 2008. When he established his claim, he received some written information and was told to file weekly claims. He started receiving Emergency Unemployment Compensation benefits during the week ending August 1, 2009.

The claimant did not know or understand he was required to establish a new claim or have a Department representative review his claim in late December 2009 to see if he was required to establish a new benefit year. The claimant did not receive any notice in December 2009 that his benefit year was about to end and he needed to contact his local Workforce office about setting up a new claim year. The claimant knew nothing about establishing yearly claims until after he received the representative's June 1, 2010 decision.

The claimant filed claims for the weeks ending January 2 through May 8, 2010. He received a total of \$3,928.00 in Emergency Unemployment Compensation benefits and benefits from the government's economic stimulus program. The claimant appealed a June 1, 2010 decision that held he was not eligible to receive Emergency Unemployment Compensation benefits as of December 27, 2009, because he was instead eligible to receive regular unemployment benefits as of December 27, 2009. This decision has been affirmed. See decision for appeal 10A-UI-08959-DWT.

On June 4, 2010, a representative's decision was mailed to the claimant. The decision informed him he had been overpaid benefits he received between December 27, 2009, and May 8, 2010. The decision also states the decision was final unless the claimant filed an appeal or his appeal was postmarked on or before June 14, 2010.

The claimant does not live at the address where his mail is delivered. He received the June 4 and another decision mailed on June 1 on the same Friday, probably June 11. When the claimant received the decisions he was upset and did not understand the decisions. He went to his local Workforce office in an attempt to understand why he received the decisions and what he needed to do. Initially, the claimant did not receive assistance or information he needed from his local Workforce representative to understand the decisions. The claimant was out of town June 17 to 21. He went back to his local Workforce office on June 23. On June 23, he spent two hours with a representative and learned why the decisions were made. The claimant filed an appeal on June 23, 2010.

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 section 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 claimant's appeal was filed after the June 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.

After the claimant received the June 4 decision, he went to his local Workforce office in an attempt to understand why he received the decision and what it meant. His failure to file a timely appeal was due in part to an Agency error in failing to timely explain the decisions the claimant received. 871 IAC 24.35(2). The claimant established a legal excuse for filing a late appeal. Since 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.

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 section 96.3-7. Based on the decision for appeal 10A-UI-08959-DWT, the claimant was not legally entitled to receive Emergency Unemployment Compensation benefits as of December 27, 2009. Even though the claimant is NOT at fault, he has been overpaid a total of \$3,928.00 in Emergency Compensation benefits and benefits from the government's economic stimulus program. The regular unemployment insurance benefits the claimant is legally entitled to receive will be used to offset this overpayment.

DECISION:

The representative's June 4, 2010 decision (reference 06) is affirmed. The claimant did not file a timely appeal, but he established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. The claimant was not legally entitled to receive Emergency Unemployment compensation benefits as of December 27, 2009. He is NOT at fault in receiving the overpayment. But he still has been overpaid and must repay a total of \$3,928.00 in Emergency Unemployment Compensation benefits and benefits from the government's economic stimulus he received for the weeks ending January 2 through May 8, 2010. The regular unemployment insurance benefits and benefits from the government's economic stimulus program that he is legally entitled to receive for these weeks will be used to offset this overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs