

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI N ELBERT
Claimant

APPEAL NO: 11A-EUCU-00086-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/24/08
Claimant: Appellant (1)**

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 12, 2011 determination (reference 08) that held she had been overpaid \$4,612.00 in Emergency Unemployment Compensation benefits she received for the weeks ending August 28, through December 25, 2010. The overpayment occurred as the result of a representative's January 6 determination that held the claimant was not eligible to receive Emergency Unemployment Compensation benefits as of August 6, 2010. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes the claimant has been overpaid the Emergency Unemployment Compensation benefits she received for the above weeks.

ISSUES:

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

Has the claimant been overpaid \$4,612.00 in Emergency Unemployment Compensation benefits she received for the weeks ending August 28 through December 25, 2010?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of August 24, 2008. She filed claims for the weeks ending August 28, through December 25, 2010. She received a total of \$4,212.00 in Emergency Compensation benefits and \$400.00 from the government's economic stimulus program for benefits she received for the weeks ending August 28 through December 11, 2010 (\$25.00 a week.)

The claimant appealed the representative's January 6, 2011 determination that held she was not eligible to receive Emergency Unemployment Compensation benefits as of August 22, 2010. This determination has been affirmed. See decision for appeal 11A-EUCU-00085-DWT.

The claimant did not know, understand or advised that she needed to establish a new claim or have a Department representative review her claim in August 2010, to see if she was required

to establish a new benefit year. The claimant relied on the Department's expertise to pay her only benefits she was legally entitled to receive.

On January 12, 2011 a representative's determination was mailed to the claimant. This determination informed the claimant she has been overpaid \$4,612.00 in Emergency Unemployment Compensation benefits that she received since August 22, 2010. After she received the January 12, 2011 overpayment determination, she contacted her local Workforce office to find out why she was held overpaid. The claimant filed her appeal at her local Workforce office on January 20, 2011.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. 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 determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 filed her appeal timely. Even though the Appeals Section received her appeal on January 24, she filed her appeal at her local Workforce office on January 20, before the January 24, deadline to appeal. Even if the claimant had not filed her appeal at her local Workforce office, the Appeals Section erred in setting up a timeliness of appeal issue because January 24 was the deadline date to file an appeal. Since the claimant filed a timely appeal, the Appeals Section has jurisdiction to address the merits of her case.

If an individual receives benefits she 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 11A-EUCU-00085-DWT, the claimant is not legally entitled to receive Emergency Unemployment Compensation benefits as of August 22, 2010. Therefore, she has been overpaid a total of \$4,612.00 in Emergency Unemployment Compensation benefits she received for the weeks ending August 28 through December 25, 2010. The claimant is not at fault in receiving this overpayment. The Department erred in failing to notice the claimant was monetarily eligible to receive regular benefits as of August 22, 2010.

Even though the claimant is not fault in receiving the benefits, she is still responsible for paying back the overpayment.

DECISION:

The representative's January 12, 2011 determination (reference 08) is affirmed. The claimant filed a timely appeal. The Appeals Section has jurisdiction to address the merits of her appeal. The claimant has been overpaid \$4,612.00 in Emergency Unemployment Compensation

benefits she received for the weeks ending August 28 through December 25, 2010. Even though the claimant is not at fault in receiving the overpayment, she is still legally responsible for repaying this amount to the Department.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css