

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CIRILO DIAZ-VALDEZ
Claimant

APPEAL 17A-UI-11762-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 11/13/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Cirilo Diaz-Valdez (claimant) appealed an unemployment insurance decision dated October 26, 2017, reference 04, which concluded he was overpaid \$464.00 in unemployment insurance benefits. No hearing was scheduled or held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

ISSUES:

Is the appeal timely?

Has the claimant been overpaid benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 13, 2016. The claimant filed for and received a total of \$464.00 in unemployment insurance benefits for the one-week ending October 14, 2017. The unemployment insurance decision dated October 25, 2017, reference 02, disqualified the claimant as he was not able to and available for work. On November 13, 2017, the agency issued an unemployment insurance decision, reference 05, reversing the initial decision and finding the claimant was able to and available for work that week.

The unemployment insurance decision was mailed to the appellant's address of record on October 25, 2017 and contained a warning that an appeal needed to be filed by November 4, 2017. The claimant communicated with IWD on November 9, 2017. The person he spoke with issued the decision reversing the denial of benefits for week ending October 14, 2017. That representative did not issue a decision reversing the overpayment. The appeal was sent within ten days after that communication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds the claimant's appeal timely and that he has not been overpaid unemployment insurance benefits.

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The agency issued a decision reversing the prior decision that disqualified the claimant after the ten-day appeal period. The agency did not issue a decision reversing the overpayment at the same time. Therefore, the claimant's appeal will be accepted as timely due to the subsequent agency action.

Iowa Code § 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.

Since the decision disqualifying the claimant has been reversed by subsequent agency action, the claimant was not overpaid \$464.00 in unemployment insurance benefits.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated October 26, 2017, reference 04, is reversed. The claimant was not overpaid \$464.00 in unemployment insurance benefits.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn