

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHUNCHENG SHI
Claimant

APPEAL 21A-UI-17908-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/17/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant, Chuncheng Shi, filed an appeal from the June 8, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that concluded he was overpaid regular state funded unemployment insurance benefits. After proper notice, a telephone hearing was held on October 8, 2021. The hearing was held together with Appeals 21A-UI-17907-JC-T and 21A-UI-17909-JC-T. The claimant participated personally and through a Mandarin/Chinese interpreter from CTS Language Link. He was represented by Jie Jung. The administrative law judge took official notice of the administrative records. Department Exhibit D-1 (appeal letter) was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

The issues are whether the claimant filed a timely appeal and whether the claimant was overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established his claim for benefits with an effective date of May 17, 2020. The claimant filed for and received \$1,421.00 in regular unemployment insurance benefits for a period between May 17, 2020 and July 4, 2020. The initial decision which denied benefits to claimant has been reversed in Appeal 21A-UI-1707-JC-T.

An initial decision (reference 02) was mailed to the claimant/appellant’s address of record on June 8, 2021. The decision contained a warning that an appeal must be filed by June 18, 2021. The decision also directed the appellant to call the customer service line for assistance.

Claimant has limited English proficiency and does not read or write English. Claimant does not have anyone in his home that can translate documents for him. Claimant/appellant filed the appeal on August 9, 2021 after receiving the FPUC overpayment decision (See Department

Exhibit 1). The claimant's appeal was filed by mail and with assistance from Ms. Jung. The appeal was delayed because of claimant's limited English proficiency.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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.

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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983).

Claimant's appeal was delayed due to a language barrier and is accepted as timely. In the future, claimant is reminded he may call or visit his local IWD office for assistance, and a translator/interpreter can be provided to help answer questions.

For the reasons that follow, the administrative law judge concludes the claimant was not overpaid benefits.

Iowa Code section 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, the claimant was not overpaid \$1,421.00 in regular unemployment insurance benefits.

DECISION:

The appeal is timely. The initial decision dated June 8, 2021 (reference 02) is reversed. The claimant was not overpaid regular benefits in the amount of \$1,421.00.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

October 18, 2021
Decision Dated and Mailed

jlb/scn