

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JENNIFER L SMITH**  
Claimant

**APPEAL NO: 20A-UI-10889-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08/26/12  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 28, 2012, (reference 03) unemployment insurance decision that concluded she was overpaid \$4,014.00 in unemployment insurance benefits. The claimant was properly notified about the hearing. A telephone hearing was held on November 5, 2020. The claimant participated. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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. Department Exhibit D-1 was admitted.

**ISSUES:**

Is the appeal timely?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant established a claim for regular unemployment insurance benefits with an effective date of August 26, 2012. This coincided with her separation with AB Transport. Claimant participated in a fact-finding interview regarding her separation. Claimant was allowed benefits initially. Employer appealed the initial decision and a telephone hearing was conducted on October 30, 2012. Claimant did not participate and the initial decision which originally allowed benefits, was reversed. See 12A-UI-11923-SW-T. That decision is final at this time.

In the decision, the administrative law judge also remanded the issue of overpayment to the Benefits Bureau to investigate. It was determined that Ms. Smith was overpaid \$4,041.00 in benefits for the weeks ending September 1, 2012 through October 22, 2012. Administrative records reflect that an initial decision (reference 03) was issued on December 28, 2012. During the period of her claim and hearing, claimant was moving and going through a divorce. She did not receive any notification of the overpayment existing or its exact amount. Claimant denied receipt of the initial decision, and no copy is available in the administrative file.

Thereafter, IWD sent claimant multiple overpayment notices in the mail, to various addresses. Notices were mailed January 16, 2013, February 9, 2013, January 2, 2014, January 4, 2016 and February 1, 2017. Claimant acknowledged she moved many times during this turbulent time in her life. She denied receiving an overpayment statement alerting her to the issue.

Claimant then filed a claim for benefits with an effective date of January 5, 2010. She reopened the claimant January 19, 2020, and established an additional claim effective March 29, 2020. She was paid out benefits for a period of time until August 29, 2020 when her benefits began being offset to recover the outstanding \$4,041.00 overpayment. She discovered the overpayment when her benefits were not deposited as anticipated. She contacted IWD and filed an appeal to the overpayment, (without any initial decision to cite) on September 4, 2020 (Department Exhibit D-1).

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to address is whether the claimant's appeal shall be considered timely.

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

Filing – determination – appeal.

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.

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).

The claimant did not have an opportunity to appeal the reference 03 initial decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Even though the decision was issued December 28, 2012 and at least five overpayment notices were mailed over the years to claimant, she denied receipt of any notification of the established overpayment. Claimant indicated her first knowledge of the overpayment was after her benefits for the week ending August 29, 2020 were offset to recover the overpayment. She inquired to IWD and filed her appeal within seven days of her notice of the overpayment. Therefore, it is accepted as timely.

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.

In this case, an administrative law judge's hearing decision dated November 2, 2012, denied benefits to the claimant after she was initially awarded benefits. See Appeal 12A-UI-11923-SW-T. The agency determined claimant had been overpaid \$4,041.00 in the subsequent reference 03 initial decision. This amount matches the administrative records showing payments she received for the period September 1, 2012 through October 22, 2012, until she was disqualified from benefits.

The hearing decision that disqualified the claimant from receiving unemployment insurance benefits is final at this time. 12A-UI-11923-SW-T. (To date, no appeal has been filed with the Employment Appeal Board to the decision.)

Therefore, the administrative law judge concludes that the overpayment is correct: Claimant has been overpaid \$4,041.00. This overpayment is subject to recovery.

**DECISION:**

The unemployment insurance decision dated December 28, 2012, (reference 03), is affirmed. The appeal is timely. The claimant has been overpaid benefits in the amount of \$4,041.00 for the period of September 1, 2012 through October 22, 2012. These benefits are subject to recovery.



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November 30, 2020  
Decision Dated and Mailed

jlb/mh