

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SPRING M DOOLEY
Claimant

APPEAL 18A-UI-05583-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 03/11/18
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 13, 2018 (reference 03) unemployment insurance decision that found claimant was overpaid benefits of \$980.00 for two weeks between March 18, 2018 and March 31, 2018. Due notice was issued for the hearing. A telephone hearing was held on June 5, 2018. The claimant, Spring M. Dooley, participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A decision dated April 13, 2018 (reference 03) was mailed to the claimant at her current address of record. Claimant received the decision prior to the appeal deadline expiring on April 23, 2018. Claimant filed an appeal on May 15, 2018, which was after the appeal deadline. Claimant did not realize that she needed to file an appeal to this unemployment insurance benefits decision because she was found eligible for benefits after her separation from employment at Wal-mart in Appeal 18A-UI-04424-S1.

NOTE: The claimant's administrative records establish that the claimant appealed an unemployment insurance decision dated April 9, 2018 (reference 02). See Appeal 18A-UI-04424-S1. The administrative law judge found that the claimant was eligible for benefits and reversed the disqualification decision that was issued regarding claimant's separation from Wal-Mart. See Appeal 18A-UI-04424-S1. Benefits were allowed, provided claimant was otherwise eligible in Appeal 18A-UI-04424-S1. No appeal has been filed from Appeal 18A-UI-04424-S1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did not file a timely appeal.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

In this case, claimant received the decision dated April 13, 2018 (reference 03) prior to the appeal deadline of April 23, 2018. However, claimant did not file an appeal until May 15, 2018. Claimant's appeal is not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the issue on appeal. Iowa Code § 96.6(2).

DECISION:

The claimant failed to file a timely appeal. The April 13, 2018 (reference 03) unemployment insurance decision is affirmed.

NOTE: The claimant's administrative records establish that the claimant appealed an unemployment insurance decision dated April 9, 2018 (reference 02). See Appeal 18A-UI-04424-S1. The administrative law judge found that the claimant was eligible for benefits and reversed the disqualification decision that was issued regarding claimant's separation from Wal-

Mart. See Appeal 18A-UI-04424-S1. Benefits were allowed, provided claimant was otherwise eligible in Appeal 18A-UI-04424-S1. No appeal has been filed from Appeal 18A-UI-04424-S1.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs