

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KARA MUNRO**  
Claimant

**UREEKA, INC.**  
Employer

**APPEAL 22A-UI-05808-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/31/21  
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment  
Iowa Code § 96.1A(37) – Total, partial, temporary unemployment  
Iowa Code § 96.5(5) – Other Compensation  
Iowa Admin. Code 871-24.18 – Wage Earnings Limitation

**STATEMENT OF THE CASE:**

On March 7, 2022, Kara Munro (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated January 27, 2022 (reference 01) that determined claimant was overpaid unemployment insurance benefits in the amount of \$493.00 for the one-week period between April 11 and April 17, 2021 due to a failure to report wages earned.

A telephone hearing was held on April 28, 2022. The parties were properly notified of the hearing. Claimant participated personally. Ureeka Inc. (employer/respondent) participated by President Rob Gatto. Official notice was taken of the administrative record.

Claimant submitted three proposed exhibits to the Appeals Bureau the night before the hearing. Claimant did not provide copies of the proposed exhibits to employer. As such those documents were not admitted in this matter.

Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Was the claimant overpaid unemployment insurance benefits (UI)?
- III. Was claimant totally, partially, or temporarily unemployed?
- IV. Were wages correctly deducted?
- V. Did the claimant correctly report wages earned?
- VI. Is the claimant eligible for benefits based on wages earned?

**FINDINGS OF FACT:**

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

Claimant began working for employer in October 2019. Claimant separated from employer effective January 15, 2021. The separation was due to a restructuring and resulted in claimant being permanently laid off.

Claimant and employer executed a severance agreement on January 17, 2021. In exchange for agreeing to confidentiality, non-disparagement, and a release of claims – among other terms – employer agreed to pay claimant the equivalent of two weeks of wages or \$2,708.33. This payment was issued on April 9, 2021. Claimant was not performing work for employer or any other employer during this period. Claimant did not report this payment when filing her weekly claims for benefits.

The Unemployment Insurance Decision was mailed to claimant at the above address on January 27, 2022. That was claimant's correct address at that time.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 6, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on March 7, 2022.

Claimant did not receive the decision in a timely manner due to being out of town for work from January 27, 2022 until the end of February 2022. There is no one else at claimant's address who could check and alert claimant to important mail received during that time.

The decision was issued approximately eight months after claimant had last filed a weekly claim for benefits and over a year after her separation from employer. Claimant had no reason to expect important correspondence regarding her eligibility for benefits going back over a year would be sent to her during the period she was out of town. Claimant did appeal within ten days of coming into possession of the decision.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated January 27, 2022 (reference 01) that determined claimant was overpaid unemployment insurance benefits in the amount of \$493.00 for the one-week period between April 11 and April 17, 2021 due to a failure to report wages earned is REVERSED.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
  - (b)

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

Claimant was out of town for work when the decision was issued. Claimant was delayed in appealing for this reason. Claimant would have been wise to have made arrangements for someone else to check for important mail received at her home address during this time. However, claimant had no reason to expect important and extremely time-sensitive correspondence regarding her eligibility for benefits from over a year ago would be sent to her during the period she was out of town. Furthermore, claimant did appeal within ten days of coming into possession of the decision. Under the circumstances the administrative law judge finds there is good cause for the delay in appealing and the appeal is therefore accepted as timely. As such the administrative law judge has jurisdiction to address the underlying issues.

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account

shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code section 96.1A(37) provides:

*"Total and partial unemployment".*

a. An individual shall be deemed *"totally unemployed"* in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code section 96.5(5) provides:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contributions to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits

were paid for any week under this chapter for a period when benefits, remuneration, or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Code section 96.1A provides in part:

40. a. "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

The administrative law judge finds the payment claimant received as part of the severance agreement was not wages earned for performing work but was a payment in consideration for claimant agreeing to confidentiality, non-disparagement, and a release of claims. As such that payment does not constitute reportable wages and claimant was not overpaid due to a failure to report wages. Claimant was totally unemployed during the week in question.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The decision dated January 27, 2022 (reference 01) that determined claimant was overpaid unemployment insurance benefits in the amount of \$493.00 for the one-week period between April 11 and April 17, 2021 due to a failure to report wages earned is REVERSED. Claimant did not fail to report wages earned and was totally unemployed during the week in question. Benefits are allowed provided she is not otherwise disqualified or ineligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge

May 2, 2022  
Decision Dated and Mailed

abd/abd