

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTOPHER W BIRD
Claimant

APPEAL 17A-UI-11154-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 05/28/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant appealed the July 25, 2017 (reference 04) unemployment insurance decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$894.00 for the two-week period ending June 10, 2017, as a result of a disqualification decision. A telephone hearing was scheduled and held on November 16, 2017, pursuant to due notice. The claimant Christopher W. Bird participated. The administrative law judge took official notice of the administrative record.

ISSUE:

Has the claimant been overpaid unemployment insurance benefits for the period in question?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The overpayment issue in this case was created by the disqualification decision that has been reversed. See 17A-UI-11153-LJ-T.

The unemployment insurance decision was mailed to the appellant's address of record on June 29, 2017. The appellant did not receive the decision. Though claimant was on the road working at the time the decision would have been received, he lives with someone who routinely opens and advises him of his mail. The first notice of disqualification was when claimant received documentation regarding how to repay the overpayment that resulted from this disqualification. The appeal was sent immediately after that communication.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant has not been overpaid benefits for the period in question.

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is. 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the fact-finder's 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). The claimant filed an appeal within a reasonable period of time after discovering the disqualification and overpayment. Therefore, the appeal shall be accepted as timely.

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.

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.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$894.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been reversed.

DECISION:

The July 25, 2017 (reference 04) unemployment insurance decision is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$894.00.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn