

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MICHAEL G O'BLENESS**  
Claimant

**APPEAL NO: 11A-UI-03263-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROQUETTE AMERICA INC**  
Employer

**OC: 09/026/10**  
**Claimant: Appellant (1)**

871 IAC 24.13(2)a – Holiday Pay  
Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits  
Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 3, 2011 determination (reference 04) that held him overpaid \$78.00 for the week ending November 13 because he did not to report holiday pay. The claimant participated in the hearing. Hiliary Carter, a human resource staffing specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant was overpaid \$78.00 for the week ending November 13, 2010.

**ISSUES:**

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Was the claimant overpaid \$78.00 in benefits for the week ending November 13 because he did not report his Veterans Day holiday pay?

**FINDINGS OF FACT:**

As the result of a labor dispute, the claimant became unemployed when he was locked out of work on September 28, 2010. He established a claim for benefits during the week of September 26, 2010. In accordance with the union contract the claimant receives holiday pay even when he is locked out. In the contract, Veterans Day is noted as a holiday.

The employer paid the claimant \$180.00 in holiday pay for Veterans Day. The claimant did not know he would receive the holiday payment during the lockout. The check was sent to the union and the claimant did not know he had actually received any money for holiday pay until late December. The claimant does not have his checks directly deposited into his bank account. When the claimant filed his weekly claim for week ending November 13 he did not report any holiday pay. He received his maximum weekly benefit amount of \$404.00 this week.

On March 3, a representative's determination was mailed to the claimant indicating he had been overpaid \$78.00 in benefits for the week ending November 13 because he had not reported his

holiday pay. The claimant received the representative's determination on March 4, 2011. He went to his local Workforce office before March 14. The representative told the claimant the Des Moines office would be contacted about the discrepancy in what he had been told to do and the decision stated. If there was a problem, the representative would call the claimant. The representative did not contact the claimant until March 16. On March 16, the representative reported that Des Moines personnel had not contacted the local Workforce about resolving the claimant's questions. The representative then advised the claimant to file an appeal, which he did on March 16, 2011.

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

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the March 14 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant had a reasonable opportunity to file a timely appeal. He understood he had to file an appeal on or before March 14 and went to his local Workforce office before March 14 to find out why he received the decision when he followed directions to report payments when he received them. The claimant relied on the representative to let him know if there was a problem. The representative did not contact him until March 16 and then advised him to appeal because Des Moines personnel had not responded to the representative's questions about the claimant's determination.

The claimant's failure to file a timely appeal was due to an Agency error or misinformation, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to make a decision on the merits of the appeal.

871 IAC 24.13(2)a provides that holiday pay is considered a wage and is deductible from a claimant's weekly benefit amount just as wages are in 871 IAC 24.18. Since the union contract specifically states employees receive holiday pay for Veterans Day and various other days, the claimant knew or should have known he would receive this holiday payment. Therefore, he is required to report holiday pay during the week in which the holiday occurred, not when paid. Holiday pay is treated no differently than wages. Wages are to be reported during the week earned, not paid. If holiday pay is not paid by the employer, the claimant may request an underpayment adjustment from the department. 871 IAC 24.13(2).

Since the claimant did not report the Veterans Day holiday pay during the week ending November 13, he has been overpaid \$78.00 in benefits for this week. The administrative record indicates the Department used benefits the claimant was legally entitled to receive during the

week ending March 12 to offset this overpayment. Therefore, as of March 12, the claimant does not owe the Department any money.

**DECISION:**

The representative's March 3, 2011 (reference 04) is affirmed. The claimant filed a late appeal, but established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant should have reported the Veterans Day holiday pay of \$180.00 during the week ending November 13, 2010. Since he did not, he was overpaid \$78.00 in benefits for this week. The Department has already recouped the overpayment from benefits the claimant was entitled to receive during the week ending March 12. Therefore, the claimant does not owe the Department any money.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css