

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**LEON C MOSLEY**  
Claimant

**APPEAL 20A-UI-03351-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATIONS & RECOVERY**

**OC: 03/08/20  
Claimant: Appellant (2)**

---

Iowa Code § 96.3-7 – Overpayment  
Iowa Code §.6(2) - Timeliness of Appeal  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment  
Iowa Code § 96.16(4) – Offenses and Misrepresentation  
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

**STATEMENT OF THE CASE:**

An appeal was filed from the March 20, 2020, reference 01 decision that found the claimant not eligible to receive unemployment insurance benefits from March 15, 2020 until March 6, 2021. A hearing was scheduled for May 14, 2020. The claimant participated personally. IWD participated by documentation. IWD Exhibit One were admitted. Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner. If the claimant filed a timely appeal, whether the claimant was overpaid unemployment insurance benefits and whether IWD properly assessed an administrative penalty in a second benefit year.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed for unemployment insurance benefits with an effective date of May 27, 2018. That benefit year ended May 26, 2019. A representative's decision dated February 25, 2019, reference 05, found the claimant overpaid \$5,934.00 for 14 weeks between August 26, 2018, and December 1, 2018. The overpayment was due to the claimant's failure to report wages from Great America Financial. The decision stated, "A 15% penalty will be added due to misrepresentation". The decision went on to say that the overpayment must be repaid before any further unemployment insurance benefits would be paid to the claimant.

The claimant filed an appeal and in a decision dated March 21, 2019, Administrative Law Judge Johnson affirmed the February 25, 2019, reference 05. The claimant was found to be overpaid unemployment insurance benefits and IWD correctly imposed the administrative penalty of 15%.

No further appeal was filed. As of May 10, 2019, the overpayment and administrative penalty was paid in full. The claimant did not file a claim for unemployment insurance benefits in 2019.

On March 8, 2020, the claimant filed a new claim for unemployment insurance benefits and his weekly benefit amount was determined to be \$500.00. He filed a weekly claim for the week ending March 14, 2020, and received benefits. He received no benefits after March 14, 2020.

On March 13, 2020, an investigator sent the claimant a letter regarding disqualification of future benefits. It provided a section of Iowa Code Section 96.5(8) that stated if misrepresentation in a certain time frame was found by the department, then the claimant would “forfeit all benefit rights under the unemployment compensation law for a period of **not more than the remaining benefit period** as determined by the division according to the circumstances of each case.” (emphasis added). The letter told the claimant that the penalty would be for the “Remainder of Benefit Year”.

A representative’s decision date March 20, 2020, reference 01, found the claimant not eligible to receive unemployment insurance benefits from March 15, 2020, through March 6, 2021, because an administrative penalty was imposed for the remainder of the claimant’s current benefit year. The department did not place the forfeiture on the benefit year in which the misrepresentation occurred, 2018.

The disqualification decision was mailed to claimant's last known address of record on March 20, 2020. The claimant did not receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 30, 2020. On April 20, 2020, the investigator emailed the claimant with the information and link to appeal. On April 20, 2020, the appeal was filed.

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

Iowa Code section 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, subsections 10 and 11, 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 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 claimant 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 Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed as soon as he discovered the decision. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is overpaid unemployment insurance benefits.

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.

The department has provided no documentation or evidence of an overpayment. A careful review of the record shows the claimant has paid all monies owed, including the 15% penalty. The claimant is not overpaid unemployment insurance benefits.

The last issue is whether the department has the authority to withhold unemployment insurance benefits in a benefit year other than the one where the misrepresentation occurred.

Iowa Code section 96.5(8) provides:

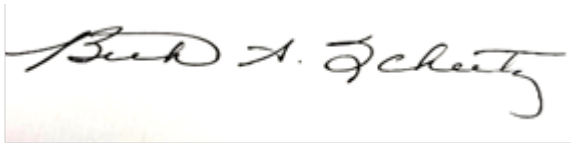
8. Administrative penalty. If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the

department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

The law indicates that as an administrative penalty, the department shall disqualify the person from benefits for a period, up to the remainder of the benefit period. The misrepresentation occurred in the May 27, 2018, benefit year. The department had the power to disqualify the claimant through May 26, 2019. The department does not have the power to issue an administrative penalty on the May 27, 2018, benefit year in the March 8, 2020, benefit year. The claimant is eligible to receive unemployment insurance benefits as of March 8, 2020.

**DECISION:**

The representative's March 20, 2020, decision (reference 01) is reversed. The appeal in this case was timely. The overpayment and penalty have now been paid in full. The department does not have the power to issue an administrative penalty from the May 27, 2018, benefit year in the March 8, 2020, benefit year. The claimant is eligible to receive unemployment insurance benefits as of March 8, 2020.



---

Beth A. Scheetz  
Administrative Law Judge

May 19, 2020  
Decision Dated and Mailed

bas/scn