

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIAN L FEICKERT
Claimant

APPEAL NO: 13A-UI-06164-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/03/13
Claimant: Appellant (1)

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 May 8, 2013 determination (reference 03) that held him overpaid \$1,188.00 in benefits he received for the weeks ending March 9 through 23, 2013. The overpayment was based on representative's March 27, 2013 determination, which an administrative law judge affirmed. The claimant participated in a June 13, 2013 hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant has been overpaid and is responsible for paying back the \$1,188.00 overpayment.

ISSUES:

Has the claimant filed a timely appeal or established a legal excuse for filing a late appeal?

Has the claimant been overpaid benefits he received for the weeks ending March 9 through 23, 2013?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of March 3, 2013. He filed claims for the weeks ending March 9 through 23, 2013. He received his maximum weekly benefit amount of \$396.00 for each of these weeks.

A March 27, determination held the claimant was not qualified to receive benefits because he voluntarily quit his employment at T & K Roofing Co., Inc. The claimant appealed this determination.

The claimant and employer participated in a hearing before an administrative law judge. After the parties presented testimony, an administrative law judge affirmed the March 27 determination and concluded the claimant was not qualified to receive benefits. See decision for appeal 13A-UI-03882-ST. The claimant appealed this decision to the Employment Appeal Board. As of June 13, 2013, the Employment Appeal Board had not made a decision on this appeal.

On May 8, 2013, a representative's determination was mailed to the claimant. In addition to informing the claimant was overpaid \$1,188.00 in benefits, the determination also stated that this determination was final unless an appeal was filed or postmarked on or before May 18, 2013. The claimant went to Hy-Vee on May 21 and asked if a letter would be postmarked that day or the next if the claimant mailed his letter from Hy-Vee. A Hy-Vee employee told the claimant his letter would be postmarked May 21. The claimant's appeal letter was postmarked May 22, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision 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 appeal was filed after the May 20 deadline for appealing expired. Since May 18 was a Saturday, the deadline was automatically extended to Monday, May 20. During the hearing the claimant thought May 20 was Memorial Day, but Memorial Day was the next week on May 27.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant testified that he wrote his appeal the weekend of May 18-19. The evidence indicates the claimant had an opportunity to file a timely appeal but did. He was one day late since he mailed it on May 21.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the claimant has been overpaid \$1,188.00 in benefits that he is required to repay.

In the alternative, assume the claimant filed a timely appeal. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3(7).

In this case, the initial March 27 determination disqualified the claimant from receiving benefits. An administrative law judge affirmed the March 27 determination. See decision for appeal 13A-UI-03882-ST. Based on the March 27 determination and the administrative law judge's decision, the claimant has been overpaid \$1,188.00 in benefits he received for the weeks ending March 9 through 23, 2013. Even though the claimant is not at fault in receiving the overpayment, he is still responsible for paying back this amount to the Department, unless the Employment Appeal Board reverses the administrative law judge's decision.

DECISION:

The representative's May 8, 2013 determination (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Based on the decision for appeal 13A-UI-03882-ST, the claimant was not legally entitled to receive benefits for the weeks ending March 9 through 23, 2013. He has been overpaid \$1,188.00 in benefits he received for

these weeks. Even though the claimant is not at fault in receiving the overpayment, he is required to pay back the overpayment unless the Employment Appeal Board reverses the administrative law judge's decision.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css