

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GENA M LAYER
Claimant

APPEAL NO. 09A-UI-00421-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/01/08 R: 04
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayment of Benefits
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Gena M. Layer (claimant) appealed a representative's November 19, 2008 decision (reference 03) that concluded she had been overpaid \$222.00 in benefits she received for the weeks ending June 28 and July 5, 2008. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on January 27, 2009. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of June 1, 2008. On November 19, 2008, a representative's decision was mailed to the claimant holding her overpaid \$222.00 in benefits she received for the weeks ending June 28 and July 5. The claimant received the representative's decision a couple of days after it had been mailed.

The claimant did not agree with the decision, but was busy visiting family and friends and taking care of other personal matters. The claimant did not appeal the decision until January 10, 2009.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 decisions must be filed within the time limit set by statute and that 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 claimant's appeal was filed after the December 1, 2008 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 received the decision before December 1 and had a reasonable opportunity to file a timely appeal, but did not do so.

The 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 file a timely appeal and did not establish a legal excuse for filing a late appeal, the Appeals Section has no legal jurisdiction to make a decision on the merits of her appeal. This means the claimant remains overpaid \$222.00 for benefits she received for the weeks ending June 28 and July 5, 2008.

DECISION:

The representative's November 19, 2008 decision (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of her appeal. This means the claimant remains overpaid \$222.00 in benefits she received for the weeks ending June 28 and July 5, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw