

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY P SPILMAN
Claimant

APPEAL 23A-UI-06715-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/12/23
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Timothy P. Spilman, the claimant/appellant,¹ filed an appeal from the Iowa Workforce Development April 11, 2023 (reference 05) unemployment insurance (UI) decision. The decision concluded that IWD overpaid Mr. Spilman REGULAR (state) UI benefits in the total gross amount of \$1,653.00 for three weeks between February 12, 2023 and March 4, 2023 because the March 16, 2023 (reference 03) UI decision denied him UI benefits because he voluntarily quit working for employer Kraft Heinz Foods Company (LLC) on December 1, 2022. On July 11, 2023, the Iowa Department of Inspections, Appeals and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Spilman and IWD for a telephone hearing scheduled for July 25, 2023.

The undersigned administrative law judge held a telephone hearing on July 25, 2023. Mr. Spilman participated personally. IWD did not participate in the hearing. The undersigned took official notice of the administrative record.

ISSUES:

Did Mr. Spilman file his appeal on time?

Did IWD overpaid Mr. Spilman REGULAR (state) UI benefits for 3 weeks between February 12, 2023 and March 4, 2023?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the undersigned finds: IWD mailed the April 11, 2023 (reference 05) UI decision to Mr. Spilman at his address of record. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by April 21, 2023.

Mr. Spilman moved from Iowa in April 2023. He updated his address with the United States Postal Service about three weeks after he moved, and he checks his mail everyday. Mr. Spilman received the decision in the mail on, or about, June 30. Mr. Spilman called IWD on

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

Monday, July 3 to ask for help filing an appeal. Mr. Spilman filed an appeal online on July 5, 2023. The DIAL UI Appeals Bureau received the appeal the same day.

The undersigned further finds: Mr. Spilman filed an initial claim for REGULAR (state) UI benefits effective February 12, 2023. IWD set his weekly UI benefit amount at \$551.00. Mr. Spilman filed weekly UI claims for 3 weeks: February 12-18, February 19-25, and February 26 – March 4. IWD sent Mr. Spilman REGULAR (state) UI benefits of \$551.00 (gross aka before taxes) each week for a total of \$1,653.00 (\$551.00 X 3).

After IWD had already sent him the money, IWD mailed Mr. Spilman a March 16, 2023 (reference 03) UI decision denying him REGULAR (state) UI benefits because he voluntarily quit working for employer Kraft Heinz Foods Company (LLC) on December 1, 2022. Mr. Spilman appealed this decision. The Administrative Law Judge Decision in Appeal 23A-UI-06714-DZ-T concluded that Mr. Spilman did not file an appeal of this decision on time and affirmed the reference 03 UI decision. This means Mr. Spilman is not eligible for REGULAR (state) UI benefits from the first day of his UI claim because he quit his job with Kraft Heinz Foods Company (LLC) on December 1, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Mr. Spilman filed his appeal of the April 11, 2023 (reference 05) UI decision on time, and IWD overpaid him REGULAR (state) UI benefits in total gross amount of \$1,653.00 for three weeks between February 12, 2023 and March 4, 2023.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1) provides:

2. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- (2) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

- (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

- (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed.² Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.³

Mr. Spilman received the April 11, 2023 (reference 05) UI decision after the appeal deadline and, therefore, could not have filed an appeal by the deadline. The notice provision of the decision was invalid. Mr. Spilman filed his appeal within 10 days of when he received the overpayment decision. Mr. Spilman filed his appeal on time.

The undersigned further concludes IWD overpaid Mr. Spilman REGULAR (state) UI benefits in the total gross amount of \$1,653.00 for three weeks between February 12, 2023 and March 4, 2023.

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.

Mr. Spilman filed weekly claims for three weeks between February 12, 2023 and March 4, 2023 and IWD sent him REGULAR (state) UI benefits of \$551.00 each week for those three weeks. After IWD had already sent him the money, IWD found Mr. Spilman not eligible to receive UI benefits based on how his job ended with employer Kraft Heinz Foods Company (LLC). The Administrative Law Judge Decision in Appeal 23A-UI-06714-DZ-T affirmed IWD's decision. Since IWD sent Mr. Spilman \$1,653.00 in UI benefits for the three week but he is not eligible for these benefits, IWD overpaid Mr. Spilman \$1,653.00 in UI benefits and he is required to repay these benefits to IWD.

² *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

DECISION:

Mr. Spilman filed his appeal of the April 11, 2023 (reference 05) UI decision on time. The April 11, 2023 (reference 05) UI decision is AFFIRMED. IWD overpaid Mr. Spilman REGULAR (state) UI benefits in the total gross amount of \$1,653.00 for 3 weeks between February 12, 2023 and March 4, 2023. Mr. Spilman is required to repay these benefits.



Daniel Zeno
Administrative Law Judge

July 27, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.