

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMMA L VIER
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 17A-UI-08234-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/21/17
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 1, 2017, (reference 06), unemployment insurance decision that found claimant overpaid unemployment insurance benefits in the amount of \$1,440.00 for the three weeks ending July 15, 2017. After due notice was issued, a telephone conference hearing was scheduled to be held on August 29, 2017. Claimant participated.

ISSUES:

Is the appeal timely?
Has the claimant been overpaid unemployment insurance benefits for the period in question?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on August 1, 2017. The appellant did not receive the decision. Claimant first became aware of the decision on August 11, 2017, when she called the agency to ask about nonpayment of benefits. Claimant was informed of the decision and filed an appeal on August 14, 2017.

Claimant received benefits during the three weeks ending July 15, 2017. Claimant received benefits in the gross amount of \$480.00 for each week.

Claimant was visiting family on the East Coast from June 26, 2017, through July 9, 2017. She returned to Iowa on July 9, 2017, and was available for work from that point forward. On July 19, 2017, a reference 04 decision was entered finding claimant unavailable for work and ineligible for benefits effective June 25, 2017. The overpayment issue in this case was created by the reference 04 ineligibility decision. The decision was modified in favor of appellant in appeal number 17A-UI-08233-CL-T. In that decision, the administrative law judge found claimant was ineligible for benefits for the two weeks ending July 8, 2017, but was available for work and eligible for benefits effective July 9, 2017.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part:

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. . . . 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.

The appellant 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 Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant was overpaid benefits for the time period in question.

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) 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 § 96.8, subsection 5. . . .

Since claimant was ineligible for benefits during the two weeks ending July 8, 2017, the administrative law judge finds claimant was overpaid benefits in the amount of \$960.00. Claimant was eligible for benefits during the one week ending July 15, 2017, and therefore was not overpaid benefits in the amount of \$480.00 that week.

DECISION:

The August 1, 2017, (reference 06) unemployment insurance decision is modified in favor of appellant. The appeal is timely. The claimant was overpaid benefits in the amount of \$960.00 for the two weeks ending July 8, 2017. The claimant was not overpaid benefits for the one week ending July 15, 2017. The benefit amount of \$480.00 in gross benefits offset for the week ending July 15, 2017, should be paid to claimant.

Christine A. Louis
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Decision Dated and Mailed

cal/scn