

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STANLEY R BOLENDER
Claimant

APPEAL NO. 12A-UI-12089-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 02/06/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 20, 2012, reference 03, that concluded he was overpaid unemployment insurance benefits in the amount of \$752.00. A telephone hearing was held on October 30, 2012. The claimant participated in the hearing.

ISSUES:

Did the claimant file a timely appeal?
Was the claimant was overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 6, 2011. He filed for and received a total of \$752.00 in unemployment insurance benefits for the two weeks between February 20 and March 5, 2011.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits was affirmed in a decision of the administrative law judge in appeal 11A-UI-05858-S2T. The claimant did not appeal the disqualification decision and it became final.

An unemployment insurance decision was mailed to the claimant's last-known address of record on July 20, 2012. The decision concluded he was overpaid unemployment insurance benefits in the amount of \$752.00 and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by July 30, 2012.

The claimant received the decision within the ten-day period for appealing the decision. He filed a letter questioning the overpayment decision on October 5, 2012, after he received a bill from the Agency asking him to repay the overpayment. The claimant delayed in filing his appeal because he did not understand that he could appeal the decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions 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 claimant's appeal was filed after the 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 claimant filed his appeal late because he did not understand he could appeal the overpayment. The claimant had a reasonable opportunity to file a timely appeal because the decision explains that he had the right to appeal it and how to appeal.

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 appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$752.00 in unemployment insurance benefits.

The claimant should contact the Agency to set up a payment plan to repay the overpayment based on his ability to repay the amount owed.

DECISION:

The unemployment insurance decision dated July 20, 2012, reference 03, is affirmed. The claimant was overpaid \$752.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs