

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUKE T BOYER
Claimant

APPEAL NO. 13A-UI-00220-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 02/22/09
Claimant: Appellant (1R)

Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.50(7) – Waiver
Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 6, 2011, reference 05, that found the claimant overpaid emergency unemployment compensation benefits (EUCU) in the amount of \$2,930.00. A telephone hearing was held on February 14, 2013.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant was overpaid EUCU benefits and, if so, can those benefits can be waived?

FINDINGS OF FACT:

The claimant filed a claim for EUCU benefits with an effective date of February 22, 2009. The claimant filed for and received a total of \$2,930.00 in EUCU benefits for the thirty-six weeks ending November 5, 2011. The claimant contacted his local office after receipt of the November 30, 2011 decision (the fact-finding decision in the companion case) and was incorrectly told he would not need to file an appeal. When he finally learned that he needed to file an appeal, the time period for the appeal had expired. The claimant filed his appeal as soon as he learned it was required.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date

of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant was given incorrect information about filing an appeal from his local office. The claimant filed the appeal immediately after learning he was required to do so. Therefore, the appeal shall be accepted as timely.

The EUCU program was created by Congress in Public Law 110-252, Title VI. This extended unemployment compensation program provides additional weeks of benefits to certain workers who have exhausted their rights to regular unemployment compensation benefits. This program was extended several times throughout 2012, allowing some workers additional benefits.

Generally, 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.

871 IAC 24.50(7) provides:

Waiver of overpayments.

a. Individuals who have received amounts of temporary extended unemployment compensation to which they were not entitled shall be required to repay the amounts of such temporary extended unemployment compensation except that the state repayment may be waived if the workforce development department determines that:

(1) The payment of such temporary extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors shall be considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the temporary extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and which was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors shall be considered:

(1) Whether the overpayment was the result of a decision on appeal;

(2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and

(3) Whether recovery of the overpayment will cause financial hardship to the individual. This rule is intended to implement Iowa Code §§ 96.11 and 96.29.

In 2012 the agency determined that the waiver provision previously used to waive TEUC benefits erroneously paid to claimants could be used to waive EUCU benefits erroneously paid to claimants, so long as the claimant met the criteria set out in the Administrative Code section above. No determination has been made as to whether the overpayment of EUCU benefits in this case should be waived pursuant to the above Iowa Administrative Code section. In *Sievertsen v. EAB*, 483 N.W.2d 818 (1992), the Iowa Supreme Court held that general principals of estoppels could not be used to force the agency to waive erroneous overpayment of benefits. Since the ruling in *Sievertsen*, the agency has adopted specific waiver provisions. Thus, while *Sievertsen* is still good law in Iowa, it is inapplicable in this case where a specific waiver provision applies.

DECISION:

The unemployment insurance decision dated December 6, 2011, reference 05, is affirmed. The claimant's appeal was timely. The claimant has been overpaid unemployment insurance benefits, but those benefits may be subject to waiver.

REMAND:

The issue as to whether the claimant is eligible for a waiver of EUCU benefits paid to him is remanded to the UISC Division. UISC will hold a fact-finding interview allowing the claimant to present evidence as to whether waiver of the overpayment should be granted. UISC shall issue a decision either granting or denying waiver, which the claimant may appeal.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css