

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIANNE E (NELSEN) MOORE
Claimant

APPEAL 17A-UI-10153-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/28/17
Claimant: Appellant (1)**

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 25, 2017 (reference 04) unemployment insurance decision that found the claimant was overpaid benefits for the two-week period ending June 10, 2017. Claimant was properly notified of the hearing. A telephone hearing was held on October 20, 2017. The claimant, Brianne E. Moore, participated.

ISSUES:

Is the appeal timely?
Has the claimant been overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The overpayment issue in this case was created by a disqualification decision dated June 15, 2017 (reference 01). Claimant stated on the record that she wished to withdraw her appeal of that decision, and thus that decision has now been affirmed. (See 17A-UI-10152-LJ-T) Claimant did receive benefits in the gross amount of \$725.00.

The unemployment insurance decision was mailed to the appellant's address of record on August 25, 2017. The appellant did not receive the decision. The first notice of the overpayment that claimant received was a bill dated September 21, 2017, charging her with the overpayment. Claimant immediately reached out to her local office and appealed the overpayment decision that related to the bill she received.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant has been overpaid benefits.

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:

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 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 reached out to her local office and appealed the decision immediately after receiving a bill, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The second issue is whether claimant has been overpaid benefits. The administrative law judge concludes claimant has been overpaid benefits for the 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) (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.

The administrative law judge understands the claimant's frustration about receiving benefits even while suspecting she was not qualified for those benefits. However, claimant chose to file weekly claims for benefits, and she admits she received the money. Therefore the administrative law judge must conclude the claimant has been overpaid unemployment insurance benefits in the amount of \$725.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been affirmed.

DECISION:

The August 25, 2017 (reference 04) unemployment insurance decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the gross amount of \$725.00 to which she was not entitled and those benefits must be recovered in accordance with Iowa law.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn