

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TAMMY R BENAVIDES**  
Claimant

**APPEAL 18A-UI-10602-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 07/03/11**  
**Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.16(4) – Fraud Overpayment Balance

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the April 10, 2012 (reference 05) unemployment insurance decision that found claimant was overpaid unemployment insurance benefits of \$5,307.50 due to misrepresentation in reporting wages earned from July 17, 2011 through February 11, 2012 pursuant to Iowa Code § 96.16. The parties were properly notified of the hearing. A telephone hearing was held on November 9, 2018. The claimant, Tammy R. Benavides, participated personally. Kevan Irvine participated on behalf of Iowa Workforce Development (“IWD”). IWD Exhibits 1 – 4 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

**ISSUE:**

Did claimant file a timely appeal?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

An unemployment insurance decision was mailed to the claimant’s correct address of record on April 10, 2012. That decision found that the claimant was overpaid unemployment insurance benefits of \$5,307.50 pursuant to Iowa Code § 96.16(4). The claimant received the decision. The decision stated that it became final unless an appeal is postmarked by April 20, 2012 or received by the appeal section by that date. Claimant did not file an appeal prior to the appeal deadline because she agreed with the amount of the overpayment that was determined in the decision. Claimant did not realize that the overpayment was determined to be fraudulent or due to misrepresentation pursuant to Iowa Code § 96.16(4). Claimant filed an appeal to this decision on October 25, 2018, after she was found ineligible for benefits due to an unpaid fraud balance.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did not file a timely appeal.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

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

Date of submission and extension of time for payments and notices.

(1) 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:

a. 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 those outlined in paragraphs 24.35(1) "a" and "b," on the date it is received by the division.

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant has not shown any good cause for failure to comply with the jurisdictional time limit to file an appeal or that the delay was due to any agency error or agency misinformation. Iowa Admin. Code r. 871-24.35(2). The claimant has not shown that there was any delay or other action of the United States Postal Service that would establish good cause for her late appeal filing. *Id.* Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the issue on appeal. Iowa Code § 96.6(2).

**DECISION:**

The April 10, 2012 (reference 05) unemployment insurance decision is affirmed. Claimant has failed to file a timely appeal and the unemployment insurance decision shall stand and remain in full force and effect.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs