

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN W SCHROEDER
Claimant

APPEAL NO: 11A-EUCU-00083-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/31/08
Claimant: Appellant (1)**

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 13, 2011 determination (reference 02) that held he had been overpaid \$4,373.00 in Emergency Unemployment Compensation benefits he received for the weeks ending September 4 through December 4, 2010. The overpayment occurred as the result of a January 6, 2011 determination that held he was not eligible to receive Emergency Unemployment Compensation benefits as of August 29, 2010, because he was instead eligible to receive regular unemployment insurance benefit. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes the claimant was overpaid \$4,373.00 in Emergency Unemployment for the 13 weeks at issue.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing late appeal?

Was the claimant overpaid \$4,373.00 in Emergency Unemployment Compensation benefits for the weeks ending September 4 through December 4, 2010?

FINDINGS OF FACT:

In early August 2010 after the claimant exhausted all his benefits under his August 30, 2009 claim, he went to his local Workforce office to see if he was eligible for any other benefits. The Department reopened his August 31, 2008 claim and started paying him Emergency Unemployment Insurance Compensation benefits as of August 8, 2010 on this previous claim year.

The claimant relied on the Department's expertise to determine if he were eligible or ineligible to receive benefits.

The claimant filed claims for the weeks ending September 4 through December 4, 2010. He received a total of \$4,048.00 in Emergency Unemployment Compensation benefits for these

weeks. He received an additional \$25.00 each of these 13 weeks from the government's economic stimulus program.

The claimant received the January 13, 2011 determination on January 17, 2011. On January 21, he called his local Workforce office to find out why he was held overpaid. The local representative told the claimant she would look into this for him. On January 24, the local representative contacted the claimant and advised him to appeal. She indicated the Department should not have put him on Emergency Unemployment Compensation benefits in August. On January 25, 2011, the claimant went to his local Workforce office and filed his appeal.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 January 24, 2011 deadline for appealing expired. Since January 23 was a Sunday, the deadline was automatically extended to Monday, January 24, 2011.

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 evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not. He did not file an appeal right away because he did not understand why he had been held overpaid.

The claimant's 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 claimant did not establish a legal excuse for filing a timely appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

In the alternative, assume the claimant established a legal excuse for filing a late appeal; he still has been overpaid Emergency Unemployment Compensation benefits he received for the weeks ending September 4 through December 4, 2010, based on the following reasoning.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on the decision for appeal 11A-EUCU-00082-DWT, the claimant is not legally entitled to receive Emergency Unemployment Compensation benefits as of August 29, 2010. He has been overpaid a total of \$4,373.00 in Emergency Unemployment Compensation benefits and money he received from the government's economic stimulus program for the weeks ending September 4 through December 4, 2010.

Even though the claimant is not at fault in receiving the overpayment, he is still required to repay this amount to the Department.

Since the claimant is eligible to receive regular unemployment insurance benefits as of August 29, these benefits have been used to offset the Emergency Unemployment Compensation benefit overpayment. As of February 14, 2011, the outstanding balance to be repaid is \$4,169.00.

DECISION:

The representative's January 13, 2011 determination (reference 02) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Even if the claimant had filed a timely appeal he was overpaid a total of \$4,373.00 in Emergency Unemployment Compensation benefits for the weeks ending September 4 through December 4, 2010.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css