

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HYKA S CADICK
Claimant

APPEAL NO. 08A-UI-02280-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12-03-06 R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 22, 2008, reference 04, decision that found the claimant overpaid unemployment insurance benefits. After due notice was issued, a hearing was held on March 24, 2008. The claimant did participate.

ISSUES:

Did the claimant file a timely appeal?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was on lay off and was filing her weekly claim by going into her local office and reporting at the end of each week. While the claimant alleges that she did report wages for the week ending August 18, 2007 because she attended orientation meetings for which she was paid for three days, the Iowa Workforce Development records indicate no wages were reported for that week. The claimant was paid \$9.25 per hour and believes she worked three days of meeting or approximately 20 to 29 hours. The claimant's wages whether she worked 20 or 29 hours would have exceeded her weekly benefit amount.

A disqualification decision was mailed to the claimant's address of record on February 22, 2008. The claimant did receive the decision but due to her inability to speak English she was unable to read and file an appeal in a timely manner. The claimant's appeal letter was due by March 3, 2008 and she filed her on March 5, 2008.

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 did not have an opportunity to appeal the fact-finder's decision because she does not speak or read English well enough to understand the decision. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed her appeal as soon as she was able to have someone help her understand the decision. Therefore, the appeal shall be accepted as timely.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. Even if the mistake on reporting the claimant's wages was due to an error by and Iowa Workforce Development employee, the claimant received wages in excess of her weekly benefit amount for the week ending August 18, 2007 and is thus overpaid for that one week.

DECISION:

The February 22, 2008, reference 04, decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$157.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css