

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MORGAN A WHALEN
Claimant

APPEAL NO: 22A-UI-05711-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeals
Iowa Code § 96.3(7) – Lost Wage Assistance

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 21, 2021, (reference 04) unemployment insurance decision that concluded she was overpaid \$1,800.00 in Lost Wage Assistance (LWA) benefits. After proper notice, a telephone hearing was conducted on April 14, 2022. The hearing was held jointly with appeal 22A-UI-05701-SN-T, 22A-UI-05702-SN-T, 22A-UI-05708-SN-T, and 22A-UI-05699-SN-T. The claimant participated. Official notice of the administrative records was taken.

ISSUES:

Whether the claimant's appeal is timely? Whether there are reasonable grounds to find her appeal otherwise timely?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 29, 2020.

The claimant filed for and received a total of \$1,800.00 in regular, state unemployment insurance benefits for the weeks between July 26, 2020 and September 5, 2020.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 22A-UI-05701-SN-T.

The following section describes the findings of fact necessary to resolve the timeliness issue:

A disqualification decision was mailed to the claimant's address of record, 107 3rd Avenue East in Donahue, Iowa on November 10, 2020 (reference 05). The claimant updated her address to this location on May 13, 2020, ten days after she moved to this address. The claimant did not

receive the decision. The claimant received a series of balance statements, labeled internally as Overpayment Statement of Amount Due 65-5314A (05-17), in November and December 2021 stating that she owed money to the agency. These balance statements do not inform parties how to appeal. The claimant did not receive overpayment decision letters dated September 21, 2021 (reference 02, 03, and 04) displaying the rationale for these decisions. The Appeals Bureau could not find Iowa Workforce Development's versions of reference 03 and 04 due to a technological error. The claimant did not receive a decision, dated February 10, 2022, (reference 05), offsetting her existing overpayments with her State of Iowa tax refund.

On March 3, 2022, an Iowa Workforce Development Department representative called the claimant and informed her that she owed money to the State of Iowa. The claimant told the representative that she did not understand because her hours were reduced due to Covid19. The representative informed the claimant that she had been disqualified from regular unemployment. After receiving this news and information regarding how to appeal, the claimant immediately appealed.

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 section 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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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, subsections 10 and 11, 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 issued, 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 did not receive decisions from the agency informing her of the decision disqualifying her, establishing overpayments, and informing her of that her refund would offset those

overpayments. The claimant received a series of balance statements, labeled internally as Overpayment Statement of Amount Due 65-5314A (05-17), in November and December 2021 stating that she owed money to the agency. These balance statements do not inform parties how to appeal. Without instructions of a means of appeal, no meaningful opportunity for appeal exists, especially for someone who is not familiar with the system and in the context of Covid19 unemployment programs. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed on March 3, 2022, the day she was first given the means to appeal and being informed of the decisions made by Iowa Workforce Development.

The next issue in this case is whether the claimant was overpaid LWA benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

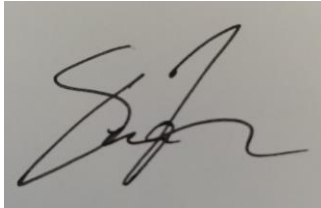
7. Recovery of overpayment of benefits.

- 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.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$1,800.00 in LWA benefits.

DECISION:

The unemployment insurance decision dated September 21, 2021, (reference 04), is affirmed. The claimant was overpaid \$1,800.00 in LWA benefits.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

April 29, 2022
Decision Dated and Mailed

smn/mh

Note to Claimant: This decision determines you have been overpaid LWA under the CARES Act. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/application-overpayment-waiver>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.