

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEANNA DILLARD
Claimant

APPEAL 21A-UI-23686-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 08/16/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

On October 25, 2021, the claimant, Keanna Dillard, appealed the September 24, 2021, (reference 05) decision that concluded the claimant was overpaid regular unemployment insurance benefits in the amount of \$8,758.00 for the 13-week period ending November 14, 2020. A telephone hearing was held on December 15, 2021, pursuant to due notice. The claimant participated personally. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?

Is the claimant overpaid regular unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed for and has received regular unemployment insurance benefits in the gross amount of \$8,758.00 for the 13-week period ending November 14, 2020. On November 19, 2020, Iowa Workforce Development (IWD) issued a decision (reference 02) that disqualified claimant from receiving regular unemployment insurance benefits. That decision has been affirmed. See 21A-UI-01230-DG-T. However, the administrative law judge notes that it appears an unemployment insurance decision (reference 04) was issued after the decision of the administrative law judge determining that claimant had earned at least 10 times her weekly benefit amount in order to requalify.

An overpayment decision was mailed to claimant's last known address of record on September 24, 2021. She did receive the letter, but she did not remember when. Claimant explained that her mail is not reliably delivered frequently. Also around the time the letter was sent, there were many personal issues happening in claimant's life. Her children get the mail for her when she is not at home, but claimant could not provide information about when she received the letter. Claimant filed her appeal on October 25, 2021.

REASONING AND CONCLUSIONS OF LAW:

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 section 96.6(2) provides, in pertinent part: “[u]nless 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.”

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

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 [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); *see also In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely 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 appellant filed the appeal within a reasonable period of time after receipt. Therefore, the appeal shall be accepted as timely.

The administrative law judge concludes claimant has been overpaid benefits for the period in question.

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.

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 concludes that the claimant has been overpaid regular unemployment insurance benefits in the amount of \$8,758.00 pursuant to Iowa Code section 96.3(7) as the disqualification decision that created the overpayment decision has been affirmed. However, subsequent agency action may affect claimant's eligibility and the overpayment at issue here. That issue will be remanded to the Benefits Bureau for review.

DECISION:

The September 24, 2021 (reference 05) decision is affirmed. The claimant's appeal is timely. Claimant has been overpaid regular unemployment insurance benefits in the amount of \$8,758.00, which must be repaid.

REMAND:

The issue of whether subsequent agency action through the reference 04 decision would impact claimant's eligibility and corresponding overpayments is remanded to the Benefits Bureau of Iowa Workforce Development for review and determination.



Alexis D. Rowe
Administrative Law Judge

January 19th, 2022
Decision Dated and Mailed

ar/rs