

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BILLY C MCNEAL**  
Claimant

**APPEAL 18A-UI-09807-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 07/01/18  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Billy C. McNeal (claimant) appealed an unemployment insurance decision dated August 23, 2018, reference 07, that concluded he was overpaid \$101.00 in unemployment insurance benefits for the week ending August 18, 2018 due to a disqualification decision mailed August 22, 2018. A telephone hearing was held on October 10, 2018 and was consolidated with the hearing for appeal 18A-UI-09808-SC-T. Proper notice of the hearing was given to the claimant. The claimant participated in the hearing. The Department's Exhibits D1 and D2 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's non-monetary readout (NMRO).

**ISSUES:**

Is the appeal timely?  
Has the claimant been overpaid benefits?

**FINDINGS OF FACT:**

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 1, 2018. The claimant filed for and received a total of \$101.00 in unemployment insurance benefits for the week ending August 18, 2018. On August 22, 2018, the unemployment insurance decision, reference 05, was mailed to the claimant disqualifying him from benefits for that week as he failed to report as directed. On August 23, 2018, the unemployment insurance decision, reference 07 which is the basis for this appeal, was mailed to the claimant's last known address of record. The claimant received both decisions along with the unemployment insurance decisions, reference 04 and reference 06, that were mailed at the same time. The decisions contained notice that an appeal would be due by Tuesday, September 4, 2018. The claimant submitted an appeal on August 28, 2018. Appeal hearings were scheduled for the unemployment insurance decisions, references 04, 05, and 06. The claimant failed to appear for the hearing and default decisions were issued. The decision currently on appeal was not scheduled for a hearing at that time due to agency error. On September 26, 2018, the claimant

filed an appeal to the unemployment insurance decision mailed September 20, 2018, reference 08, and the appeal for this decision was scheduled at the same time.

The unemployment insurance decision, dated August 22, 2018 reference 05, that disqualified the claimant from receiving unemployment insurance benefits remains in effect as the appeal was dismissed in a decision of the administrative law judge in appeal 18A-UI-09043-CL-T. The appeal of the dismissal is still currently pending with the Employment Appeal Board (EAB).

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely and, at this time, the claimant has been overpaid unemployment insurance benefits which must be repaid.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

The claimant initially filed the appeal on August 28, 2018 when he appealed the disqualifying decision. The appeal was not set for hearing at that time due to agency error. Therefore, the appeal shall be accepted as timely.

Iowa Code § 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 currently remains in effect, the claimant has been overpaid \$101.00 in unemployment insurance benefits. The overpayment decision rests on the outcome of the disqualifying decision, the appeal of which is still pending with the EAB.

### **DECISION:**

The claimant's appeal is timely. The unemployment insurance decision dated August 23, 2018, reference 07, is affirmed at this time. The claimant has been overpaid \$101.00 in unemployment

insurance benefits, which must be repaid. The overpayment decision rests on the outcome of the disqualifying decision, the appeal of which is still pending with the EAB.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

src/scn