

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**DIANNE M JENSEN  
1419 – 4<sup>TH</sup> AVE N  
FORT DODGE IA 50501**

**VERASUN ENERGY CORP  
100 – 22<sup>ND</sup> AVE STE 103  
BROOKINGS SD 57006 2425**

**Appeal Number: 05A-UI-12208-DWT  
OC: 09/25/05 R: 01  
Claimant: Appellant (4)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**STATE CLEARLY**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

**Section 96.3-7 – Recovery of Overpayment of Benefits**

**STATEMENT OF THE CASE:**

Dianne M. Jensen (claimant) appealed a representative's October 18, 2005 decision (reference 03) that concluded she had been overpaid \$292.00 in benefits she received for the week ending October 1, 2005. The overpayment occurred as the result of another representative's decision that held her ineligible to receive benefits until October 9, 2005. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on December 19, 2005. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Has the claimant been overpaid \$292.00 in benefits she received for the week ending October 1, 2005?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of September 25, 2005. The claimant filed claims for the weeks ending October 1, 8 and 15, 2005. The claimant received \$292.00 in benefits for the week ending October 1. The claimant did not receive any benefits for the week ending October 8, 2005. For the week ending October 15, the claimant reported she had received vacation pay of \$949.00. Since the claimant's vacation pay exceeded her weekly benefit amount, the claimant did not receive any benefits for the week ending October 15, 2005.

On October 18, 2005, representatives' decisions were mailed to the claimant indicating she had been overpaid \$292.00 in benefits she received for the week ending and that the claimant was not eligible to receive benefits for the weeks ending October 1 and 8, 2005 because vacation pay was attributed to these weeks.

The claimant never received the representative's October 18 decisions. On December 1, 2005, the claimant received a bill stating she owed the Department \$292.00 in benefits she received for the week ending October 1, 2005. The claimant contacted her local Workforce office to find out why she received the bill. The claimant then learned about the October 18 decision and that she needed to appeal the decision. The claimant appealed the October 18 decisions on December 5, 2005. The October 18 decision that held the claimant was not eligible to receive benefits until October 9 has been modified in the claimant's favor. The claimant is only ineligible to receive benefits for the week ending October 1, 2005. See decision for appeal 05A-UI-12207-DWT.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the

decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision 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 October 28, 2005 deadline for appealing expired.

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 did not have a reasonable opportunity to file a timely appeal because she did not receive the October 18, 2005 decision.

The claimant's failure to file a timely appeal was due to a delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

If an individual receives benefits she 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 05A-UI-12207-DWT, the claimant is not legally entitled to receive benefits for the week ending October 1, 2005. Since the claimant was entitled to receive benefits for the week ending October 15, but did not receive any benefits, these two weeks (October 1 and 15) cancel each other out. The claimant has not been paid any benefits for the week ending October 8 and she is entitled to receive benefits for this week. Therefore, the Department has underpaid the claimant \$292.00 in benefits for the week ending October 8, 2005.

DECISION:

The representative's October 18, 2005 decision (reference 03) is modified in the employer's favor. The claimant is not legally entitled to receive benefits for the week ending October 1, 2005. The claimant is entitled to receive benefits for the week ending October 15, but did not receive any benefits for this week. Therefore, these two weeks (October 1 and 15) cancel each other out. The claimant has not been paid any benefits for the week ending October 8 and she is entitled to receive benefits for this week. The Department has underpaid the claimant \$292.00 in benefits for the week ending October 8, 2005.

dlw/