

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUIS PANDURO
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 18A-UI-08282-NM

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/01/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 12, 2018, reference 05, that concluded he was overpaid \$5,915.00 in unemployment insurance benefits. The parties were properly notified about the hearing. An in-person hearing was held in Des Moines, Iowa, on August 29, 2018. Claimant participated and was represented by attorney Marlon Mormann. Claimant's Exhibits A through C and Department's Exhibits D-1 were received into evidence.

ISSUES:

Is the appeal timely?

Has the claimant been overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed for and received a total of \$5,915.00 in unemployment insurance benefits for the weeks between April 1, 2018 and June 30, 2018. The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been reversed in a decision of the administrative law judge in appeal 18A-UI-08281-NM-T.

An unemployment insurance decision denying benefits was mailed to the claimant's last known address of record on July 12, 2018. Claimant was not sure when he received the decision, but noted he was out of town for approximately 12 days in the month of July visiting his mother in California. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 22, 2018. Claimant's primary language is Spanish, though he is able to speak and understand spoken English. Claimant finds written English difficult to understand and comprehend. Immediately upon receiving the letter claimant spoke with his attorney, who advised him to file an appeal. Claimant filed his appeal the next day, August 3, 2018.

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 § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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 question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant was out of town attending to a sick family member at the time the letter was initially sent. Claimant received the letter the evening he return to Iowa, but his lack of proficiency in English created a language barrier, which hindered his ability to file his appeal by the prescribed deadline. Claimant immediately contacted his attorney who explained what he needed to do. His inability to personally understand the fact finding decision affected his ability to timely appeal the adverse decision through no fault of his own. Due process principles apply in the context of appeal hearings for persons seeking unemployment benefits. *Silva v. Employment Appeal Board*, 547 N.W.2d 232 (Iowa App. 1996). Two of the benchmarks of due process are adequate notice and meaningful opportunity to be heard. The claimant was not afforded due process rights. While the claimant was literally provided the decision, he could not timely comply with the appeal instructions, as he required additional time to fully understand the decision, along with his corresponding appeal rights and instructions. Once claimant was able to seek and receive assistance in understanding the decision and his appeal rights, he immediately filed an appeal. Accordingly, the claimant's appeal is accepted as timely.

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

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 has been reversed, the claimant was not overpaid \$5,915.00 in unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated July 12, 2018, reference 05, is reversed. The appeal is timely. The claimant was not overpaid \$5,915.00 in unemployment insurance benefits.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs