

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JASNA COVIC
Claimant

APPEAL NO. 07A-UI-06132-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/06/07 R: 03
Claimant: Appellant (2)**

Section 96.6-2 – Timeliness of Appeal
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Jasna Covic (claimant) appealed a representative's June 5, 2007 decision (reference 02) that concluded she had been overpaid \$873.00 in benefits she received for the weeks ending May 12 through 26, 2007. The overpayment occurred as the result of a June 4, 2007 decision that held she was not eligible to receive benefits as of May 6, 2007. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on July 19, 2007. The claimant participated in the hearing with her attorney, Phillip Miller. Zijo Sucasca translated 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.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Has the claimant been overpaid \$873.00 in benefits?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of May 6, 2007. The claimant filed claims for the weeks ending May 12 through 26, 2007. She received a total of \$873.00 in benefits for these weeks.

On June 5, 2007, a representative's decision was mailed to the claimant, but not Miller. Miller participated in the fact-finding interview with an interpreter and requested that the decision be sent to him. The claimant does not speak or read English. The June 5 decision held the claimant had been overpaid \$873.00 in benefit. The claimant contacted Miller on June 18 and told him she had just received the decision. Miller understood the decision was adverse to the claimant. He told the claimant to immediately go to her local Workforce office and file an appeal in this matter. The claimant followed Miller's instructions and filed an appeal on June 18 at her local Workforce Center.

The claimant also appealed a representative's June 4, 2007 decision that concluded she was not eligible to receive benefits as of May 6, 2007, because she was not able to and available for work. This decision has been reversed. See decision for appeal 07A-UI-06131-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 June 15, 2007, 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. The claimant testified she did not receive the decision until June 18. More importantly, the claimant, a person who does not read or speak English, had her attorney present at the fact-finding interview. Miller requested that the decision be mailed to him, but it was not. Under these facts, the claimant's failure to file a timely appeal was due to any Agency error, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Even though the claimant's appeal was not timely, she established a legal excuse for filing a late appeal. Therefore, the Appeals Section has legal jurisdiction to address the merits of the claimant's 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 07A-UI-06131-DWT, the claimant is legally entitled to receive benefits for the weeks ending May 12 through 26, 2007. The claimant has not been overpaid \$873.00 in benefits.

DECISION:

The representative's June 5, 2007 decision (reference 02) is reversed. Even though the claimant did not file a timely appeal, she established a legal excuse for filing a late appeal. Therefore the Appeals Section has jurisdiction to address the merits of her appeal. The

claimant is legally entitled to receive benefits for the weeks ending May 12 through 26, 2007. The claimant has not been overpaid \$873.00 in benefits she received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css