

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GABRIEL M BUSCHRIVERA
Claimant

APPEAL 18A-UI-10784-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/10/17
Claimant: Appellant (4)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(13) – Disqualification due to Outstanding Fraud Overpayment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 4, 2018 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits due to an outstanding fraud overpayment balance. The parties were properly notified of the hearing. A telephone hearing was held on November 19, 2018. The claimant, Gabriel M. Buschriviera, participated personally. Kevan Irvine participated on behalf of IWD. IWD Exhibits 1 through 7 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant ineligible for benefits due to an outstanding fraud overpayment balance?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A decision dated October 4, 2018 (reference 01) was mailed to the claimant at his correct address of record. Claimant never received the decision in the mail.

The claimant had filed a claim for unemployment insurance benefits with an effective date of November 24, 2013. During that claim year, a decision was issued on November 10, 2014, which found that the claimant was overpaid benefits of \$424.00, including a 15% penalty due to misrepresentation when he failed to report wages from Slycord Construction Inc. The 15% penalty was \$63.60. Claimant did not appeal the decision and it became final.

Claimant knew that he owed an overpayment balance to IWD; however, he believed that the balance would be offset for payment, as it had been in a previous claim year. Claimant filed an additional claim effective September 30, 2018. Claimant spoke to an IWD representative and learned that the penalty amount owed would not be offset. On October 23 2018, claimant paid

the remaining balance owed. Claimant's claim was unlocked once the total balance was paid in full; however, the claimant is now back to work full-time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did file a timely appeal.

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.

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. Iowa Code § 96.6(2). In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant never received the decision in the mail. Claimant filed an appeal after learning that he was not eligible for benefits when speaking to an IWD representative. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was ineligible for benefits due to an unpaid fraud overpayment balance. The administrative law judge finds that the claimant was ineligible for benefits due to the unpaid fraud overpayment balance between his additional claim date of September 30, 2018 and the date he paid his balance in full on October 23, 2018.

As of July 1, 2018, Iowa Code section 96.5(13) provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

When the claimant filed his additional claim effective September 30, 2018, he still owed a balance of \$63.60 due to a decision issued on November 10, 2014, which had found that the claimant failed to report wages earned from Slycord Construction Inc., resulting in determination that the claimant engaged in misrepresentation pursuant to Iowa Code § 96.16(4). Because this fraud balance remained unpaid, claimant was not eligible for benefits from September 30, 2018 until the week that the claimant paid his balance in full. See Iowa Code § 96.5(13).

DECISION:

The October 4, 2018 (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant was not eligible for benefits from his additional claim date of September 30, 2018 through October 20, 2018 due to an unpaid fraud overpayment balance. Benefits are allowed effective October 21, 2018, provided claimant meets all other eligibility requirements.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn