

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TONY C WELCH
Claimant

APPEAL NO. 16A-UI-11089-ECT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/20/16
Claimant: Appellant (6)

Iowa Code § 96.3(7) – Overpayment
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-26.4(2) – Basis for Appeal

STATEMENT OF THE CASE:

This matter was erroneously set up as an appeal from the decision issued on September 6, 2016, reference 02, assessing an overpayment in the amount of \$388.00. This decision was issued by an investigator in the Iowa Workforce Development (IWD) Investigations & Recovery Unit. The claimant filed appeals from other unemployment insurance decisions. The appeal was filed online on October 12, 2016.

ISSUE:

Was this matter erroneously set up as an appeal?

Was the appeal untimely?

FINDINGS OF FACT:

The evidence available in the administrative file shows that the claimant filed an appeal from an unemployment insurance decision relating to the separation of his employment with Stateline Trailers, Inc. That appeal is scheduled for a hearing. The claimant also filed an appeal from an unemployment insurance decision relating to the separation of his employment with Fres-Co System USA Inc. That appeal is scheduled for a hearing. The claimant communicated his intentions to the IWD investigator. He stated that he did not intend to appeal the \$388.00 overpayment decision. He stated his intention to appeal the other unemployment insurance decisions.

The appeals were filed online on October 12, 2016. The decision assessing the \$388.00 overpayment was issued on September 6, 2016, reference 02. The deadline to appeal this decision was September 16, 2016.

REASONING AND CONCLUSIONS OF LAW:

An appeal from an unemployment insurance decision should include the grounds upon which it is based. Iowa Admin. Code r. 871-26.4(2). The claimant included the grounds for his appeals from the decisions relating to his separations from his previous employers. The claimant did not include any grounds for an appeal from this overpayment decision. The claimant later confirmed that he did not intend to file an appeal from this overpayment decision. The appeal was set up in error.

Furthermore, the appeal is untimely. The decision was issued on September 6, 2016. The appeal deadline was September 16, 2016. This decision includes this statement: "This decision becomes final unless an appeal is postmarked by 09/16/2016, or received by Iowa Workforce Appeal Section by that date."

Iowa Code §96.6(2) requires a claimant to file an appeal of an IWD decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court determined that a timely appeal is both mandatory and jurisdictional. *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

The claimant's appeal was dated October 12, 2016. The IWD Appeals Bureau received this appeal on the same date. This appeal was untimely. Because the claimant's appeal was untimely, I do not have jurisdiction to consider whether or not he owes the \$388.00 overpayment.

DECISION:

This matter was erroneously set up as an appeal. The appeal is dismissed. The decision issued on September 6, 2016, reference 02, remains in effect.

Emily Gould Chafa
Unemployment Insurance Appeals Bureau
Iowa Workforce Development

Decision Dated and Mailed

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