

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA E PERCY
Claimant

APPEAL 18A-UI-05561-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 02/18/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 26, 2018 (reference 03) unemployment insurance decision that found claimant was overpaid benefits of \$1,031.00 for four weeks between February 25, 2018 and March 31, 2018. Due notice was issued for the hearing regarding the overpayment issue. The claimant waived receipt of due notice regarding the issue of timeliness of the appeal. A telephone hearing was held on June 5, 2018. The claimant, Linda E. Percy, participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

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

A decision dated April 26, 2018 (reference 03) was mailed to the claimant at her current address of record. Claimant received the decision and filed an appeal to both the April 26, 2018 (reference 03) decision and a decision dated April 24, 2018 issued in Appeal 18A-UI-03959-S1 on April 30, 2018.

The claimant's administrative records establish that the claimant received benefits of \$1,031.00 for four weeks between February 25, 2018 and March 31, 2018. The overpayment issue in this case was created by a disqualification decision entered in Appeal 18A-UI-03959-S1. That disqualification decision was affirmed by the Employment Appeal Board on May 29, 2018. Claimant does not intend to appeal the decision of the Employment Appeal Board to the District Court.

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 filed 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.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that 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, claimant filed an appeal to both the unemployment insurance benefits decision dated April 26, 2018 (reference 03) and the decision entered in Appeal 18A-UI-03959-S1 in the same document submitted to the agency on April 30, 2018. As such, claimant's appeal is timely.

The next issue is whether the claimant is overpaid benefits. The administrative law judge finds that the claimant is overpaid benefits of \$1,031.00.

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.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits of \$1,031.00 for four weeks between February 25, 2018 and March 31, 2018 pursuant to Iowa Code § 96.3(7), as the disqualification decision that created the overpayment (Appeal 18A-UI-03959-S1) has been affirmed by the Employment Appeal Board.

DECISION:

The claimant filed a timely appeal. The April 26, 2018 (reference 03) unemployment insurance decision is affirmed. The claimant has been overpaid unemployment insurance benefits of \$1,031.00 to which she was not entitled. Those benefits must be recovered in accordance with Iowa law.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs