

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERCEDES E HERNANDEZ
Claimant

APPEAL NO: 09A-UI-00516-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/24/08 R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Mercedes E. Hernandez (claimant) appealed a representative's October 15, 2008 decision (reference 07) that concluded she had been overpaid \$476.00 in benefits she received for the weeks ending September 13 and 20, 2008. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on January 28, 2009. The claimant did not participate in the hearing. Based on the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of August 24, 2008. On October 15, 2008, a representative's decision was mailed to the claimant indicating she had been overpaid \$476.00 in benefits she received for the weeks ending September 13 and 20, 2008.

It is not known when the claimant received the representative's October 15, 2008 decision. The claimant did not file an appeal from the decision until January 14, 2009.

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 filed her appeal months after the October 25, 2008 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). Since the claimant did not participate in the hearing, she did not establish that she did not have a reasonable opportunity to file a timely appeal.

The administrative record does not establish the claimant's failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the claimant did not file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section has no legal jurisdiction to make a decision on the merits of the claimant's appeal. The means the claimant remains overpaid \$476.00 in benefits she received for the weeks ending September 13 and 20, 2008.

DECISION:

The representative's October 15, 2008 decision (reference 07) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no legal jurisdiction to address the merits of her appeal. This means the claimant remains overpaid and must repay a total of \$476.00 in benefits she received, but was not legally entitled to receive for the weeks ending September 13 and 20, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css