

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REESE J PHILLIPS
Claimant

SLB OF IOWA LC
Employer

APPEAL 21A-UI-11101-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Reese J Phillips., the claimant/appellant, filed an appeal from the March 24, 2021, (reference 04) unemployment insurance decision that concluded he was overpaid benefits in the amount of \$2,366.00. Mr. Phillips was properly notified about the hearing. A telephone hearing was held on July 8, 2021. Mr. Phillips participated and testified. Official notice was taken of the administrative record.

ISSUES:

Is the Mr. Phillips' appeal filed on time?
Has Mr. Phillips been overpaid REGULAR UI benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Phillips at the correct address on March 24, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by April 3, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. April 3, 2021 was a Saturday; therefore, the deadline was extended to Monday, April 5, 2021.

Mr. Phillips received the decision in the mail on April 10, 2021. Mr. Phillips filed an appeal via fax and by letter via the United States Postal Service on April 10, 2021. The appeal was received by Iowa Workforce Development on April 10, 2021

The administrative law judge further finds: Mr. Phillips received REGULAR UI benefits in the amount of \$2,197.00 for 13 weeks between April 26, 2020 and July 25, 2020.

On August 5, 2020, Iowa Workforce Development issued a reference 02 decision finding Mr. Phillips was not eligible for REGULAR UI benefits. The administrative law judge's decision in Appeal 21A-UI-11100-DZ-T affirmed the reference 02 decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Mr. Phillips' appeal in this matter was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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 Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Mr. Phillips did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Mr. Phillips' filed his appeal on the day he received the decision. The appeal was filed on time.

The administrative law judge further concludes that Mr. Phillips has been overpaid REGULAR UI benefits.

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) (a) 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 section 96.8, subsection 5.

Mr. Phillips has been overpaid REGULAR UI benefits in the amount of \$2,197.00 for the 13 weeks between April 26, 2020 and July 25, 2020, since he was not qualified and/or eligible to receive REGULAR UI benefits during those weeks per the administrative law judge's decision in Appeal 21A-UI-11100-DZ-T.

DECISION:

The appeal was filed on time. The March 24, 2021, (reference 04) unemployment insurance decision is affirmed. Mr. Phillips has been overpaid REGULAR UI benefits in the amount of \$2,197.00, which must be repaid.



Daniel Zeno
Administrative Law Judge
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July 19, 2021
Decision Dated and Mailed

dz/kmj