

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BLAKE M MATNEY**  
Claimant

**APPEAL NO: 11A-UI-15329-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 10/04/09  
Claimant: Appellant (1)**

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

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's November 14, 2011 determination (reference 06) that held him overpaid \$91.00 in benefits he received between October 4, 2009, and January 2, 2010. The overpayment occurred because the claimant's maximum weekly benefit amount was reduced in a corrected March 12, 2010 monetary determination. The claimant participated in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant has been overpaid \$91.00 in benefits.

**ISSUES:**

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

Has the claimant been overpaid \$91.00 in benefits?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of October 4, 2009. He filed claims for the weeks ending October 10, 2009, through January 2, 2010. He received \$374.00 in maximum weekly benefits for these weeks.

The claimant appealed a corrected March 12, 2010 monetary determination that held he was only eligible to receive a maximum of \$367.00 each week. The March 12, 2010 corrected monetary determination has been affirmed. See decision for appeal 11A-UI-15327-DWT.

On November 14, 2011 a representative's determination was mailed to the claimant. He received the determination on or about November 17, 2011. The claimant signed his appeal on November 24, but his appeal letter had a postmark of November 28, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. 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 determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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's appeal was filed on November 28 or after November 25 deadline for appealing expired. Since November 24 was a holiday, Thanksgiving, the claimant had until November 25 to file or have his appeal letter postmarked.

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). The evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant's failure to file a timely appeal was not 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) excuses the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeal Section does not have jurisdiction to make a decision on the merits of the appeal.

In the alternative, if the claimant filed a timely appeal, he still has been overpaid \$91.00 in benefits. Based on the decision for the March 12, 2010 corrected monetary determination, the claimant was not legally entitled to receive \$374.00 in benefits for the weeks ending October 10, 2009, through January 2, 2010. The claimant is only entitled to receive \$367.00 a week. This means he was overpaid \$7.00 for 13 weeks or a total of \$91.00.

The claimant is NOT at fault in receiving the overpayment. Even though he is not at fault, the claimant is still legally responsible for paying back the overpayment to the Department.

**DECISION:**

The representative's November 14, 2011 determination (reference 06) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals

Section does not have any legal authority to change the overpayment decision. Even if the claimant had filed a timely appeal based on the March 12, 2010 corrected monetary determination he was overpaid a total of \$91.00 in benefits he received for the weeks ending October 4, 2009, through January 2, 2010. Even though the claimant is NOT at fault in receiving the overpayment, he is legally responsible for paying back this amount to the Department.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs