

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE L MANGRICH
Claimant

APPEAL 17A-UI-13334-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 08/20/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 29, 2017, (reference 05) unemployment insurance decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$316.00 for the one-week period ending November 11, 2017, as a result of a disqualification decision. After due notice was issued, a hearing was held by telephone conference call on January 19, 2018. Claimant participated. Official notice was taken of the administrative record with no objection.

ISSUE:

Is the appeal timely?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An overpayment unemployment insurance decision was mailed to claimant's last known address of record on November 29, 2017. Claimant did not receive the decision within the appeal period. Sometime after December 9, 2017, claimant received notification from Iowa Workforce Development (IWD) that she had been overpaid unemployment insurance benefits. Claimant then contacted Iowa Workforce Development regarding the overpayment notification and was informed about the decision dated November 22, 2017 (reference 03) that found her ineligible for benefits from November 5, 2017 through November 17, 2017. Claimant had not received the unemployment insurance decisions dated November 22, 2017 reference 03 or 04 that had denied her benefits. IWD then sent claimant a copy of the decision dated November 22, 2017 (reference 03). Claimant testified a couple of days later she received a copy of the decision dated November 22, 2017 (reference 03). The overpayment decision (dated November 29, 2017 (reference 05)) contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 9, 2017. The appeal was not filed until December 26, 2017, which is after the date noticed on the unemployment insurance decision.

The overpayment issue in this case was created by the disqualification decision that has been reversed in appeal number 17A-UI-13332-JP-T. Claimant received benefits in the gross amount of \$316.00 for the one-week period ending November 11, 2017.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the unemployment insurance decision dated November 29, 2017 (reference 05) because the decision was not received in a timely fashion. Claimant did not receive notification that she had been overpaid unemployment insurance benefits until after the appeal deadline had passed. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant filed an appeal within a reasonable period of time after discovering the overpayment decision. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is overpaid benefits. The administrative law judge concludes claimant has not been overpaid benefits.

Iowa Code section 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.

The administrative law judge concludes that claimant has not been overpaid unemployment insurance benefits in the amount of \$316.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been reversed in appeal number 17A-UI-13332-JP-T.

DECISION:

The November 29, 2017, (reference 05) unemployment insurance decision is reversed. Claimant's appeal is considered timely. Claimant has not been overpaid unemployment insurance benefits in the amount of \$316.00.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs