

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA L HAHN**  
Claimant

**APPEAL NO. 12A-UI-01002-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/23/10**  
**Claimant: Appellant (1-R)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.6(2) – Timeliness of Appeal  
871 IAC 24.50(7) – Waiver of Overpayments

**STATEMENT OF THE CASE:**

Claimant Hahn filed an appeal from an unemployment insurance decision dated January 11, 2012 (reference 07) that found she had been overpaid \$5,500.00 in Emergency Unemployment Compensation (EUC) for the 19 weeks ending November 12, 2011 after a substantive decision denied benefits and was affirmed. (See also, 12A-UI-01001, 11A-UI-16587, and 11A-UI-16588-LT.) After due notice was issued, a telephone hearing was held on January 30, 2012. Hahn participated.

**ISSUES:**

Is Hahn's appeal timely, has she been overpaid EUC benefits, and can the overpayment be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: This appeal was filed late because the agency had initially advised that she needed only to file a new claim for benefits. The overpayment issue in this case was created by an ineligibility decision that has now been affirmed. Hahn received EUC benefits totaling \$5,500.00 for the 19 weeks ending November 12, 2011. The overpayment in this case has occurred through no fault of Hahn.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 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, subsection 10, 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 administrative law judge concludes that the failure to file an appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay pursuant to 871 IAC 24.35(2). Thus, the appeal is accepted as timely.

The administrative law judge concludes Hahn has been overpaid benefits for the period in question.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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 Hahn has been overpaid EUC benefits in the amount of \$5,500.00 pursuant to Iowa Code § 96.3(7), as the ineligibility decision that created the overpayment decision has now been affirmed.

Iowa Code § 96.3(7) requires that unemployment insurance benefits paid in error be repaid to the agency, even if the individual is not at fault for the overpayment. A waiver of an overpayment is available under some circumstances. See, Iowa Admin. Code r. 871-24.50(7) and Public Law 110-252 section 4005(c). The EUC program was created by Public Law 110-252 in 2008. It initially provided 13 weeks additional weeks of federally-funded EUC benefits to persons who had exhausted regular unemployment benefits, which has been extended several times. P.L. 110-252 has its own specific provisions regarding overpayments and waivers of overpayment. §4005(b) states:

REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual; and

(2) such repayment would be contrary to equity and good conscience.

DOL's implementation instructions for §4005(b) provide that a state can elect to waive recovery of nonfraudulent EUC overpayments, provided the state has a waiver provision for regular compensation or adopts a waiver provision for EUC that meets the federal waiver standard of (A) the payment of EUC was without fault on the part of the individual, and (B) such repayment would be contrary to equity and good conscience. UIPL No. 23-08, Attachment A. The question of whether the overpayment should be waived is remanded to the Unemployment Insurance Services Division. The agency shall give notice in writing of whether or not the waiver of the overpayment is granted and shall provide appeal rights therefrom.

**DECISION:**

The January 11, 2012 (reference 07) decision is affirmed. Hahn's appeal is timely, but she has been overpaid EUC benefits in the amount of \$5,500.00.

**REMAND:**

The overpayment waiver issue is remanded to the Unemployment Insurance Services Division for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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