

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HELENA YOUNG
Claimant

APPEAL NO. 13A-UI-01701-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/13/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 17, 2013, reference 01, that concluded she was overpaid unemployment insurance benefits in the amount of \$11,426.00. A telephone hearing was held on March 14, 2013. The claimant participated in the hearing with her representative, Christopher Rottler, and a witness, Abraham Quayee. Exhibits A through E were admitted into evidence at the hearing. The record was left open for the claimant and her witness to submit affidavits on the issue of whether the claimant filed a timely appeal. Those affidavits are admitted into evidence as Exhibits F and G.

ISSUES:

Did the claimant file a timely appeal?
Was the claimant was overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 13, 2012. The claimant filed for and received a total of \$11,426.00 in unemployment insurance benefits for the weeks between May 13, 2012, and December 1, 2012.

An unemployment insurance decision issued on June 14, 2012, concluded the claimant was eligible for benefits because her discharge was not for work-connected misconduct. The claimant mistakenly appealed this decision and a hearing was scheduled on her appeal for July 18, 2012. After it was explained that the decision was in her favor, the claimant withdrew her appeal, and a decision approving the withdrawal of her appeal was issued on July 19, 2012. The decision stated that the unemployment insurance decision dated June 14, 2012, was affirmed and the decision granting benefits remained in effect.

The employer appealed the decision approving the withdrawal of the claimant's appeal to the Employment Appeal Board claiming that it had also appealed the unemployment insurance decision dated June 14, 2012, granting benefits to the claimant. On October 3, 2012, the Employment Appeal Board issued a decision accepting the employer's claim that it had

appealed the June 14, 2012, decision but that the appeal had not been adjudicated due to Agency error. In its decision, the EAB stated: "The decision of the administrative law judge dated July 19, 2012, is not vacated" and remanded the matter for new hearing and decision on the merits of the case.

After a hearing on December 5, 2012, an administrative law judge issued a decision on December 7, 2012, that concluded the claimant was disqualified from receiving benefits because she had voluntarily quit employment without good cause. The claimant appealed that decision to the EAB. The EAB affirmed the decision February 21, 2013.

While the appeal to the EAB was pending, an overpayment decision stating the claimant was overpaid \$11,426.00 in benefits was mailed to the claimant's last-known mailing address on January 17, 2013. The decision stated that the decision would become final unless an appeal was filed by January 27, 2013.

The claimant is from Liberia and cannot read or write English and relies on her husband and children to handle mail sent to her. Her husband is also from Liberia and has limited English reading and writing skills. She and her husband are uncertain about when they received the overpayment decision, but when her husband opened it and read it, he understood that it related to the EAB appeal he had assisted his wife in filing and was not something separate that needed to be appealed.

Because no decision had been issued by the EAB as of February 2013, the claimant and her husband went to Iowa Legal Aid for assistance on February 5, 2013. The attorney advised the claimant to file an appeal from the overpayment decision. The claimant's husband wrote an appeal on February 7 and delivered it to Appeals Bureau on February 13, 2013.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2.

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 claimant filed her appeal late because she does not read or write English and her husband has limited English reading and writing skills and they did not understand the decision related to a separate matter not part of the appeal the claimant had already filed. Thus, the claimant did not have a reasonable opportunity to file a timely appeal and promptly appealed when she and her husband discovered what the decision meant. The appeal is deemed timely.

The next issue in this case is whether the claimant is required to repay the benefits she received.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7.

The unemployment rules, however, provide that no overpayment shall accrue to a claimant for benefits paid when an initial decision of a representative awarding benefits is affirmed by an administrative law judge and then later is reversed by a higher authority. 871 IAC 23.43(3).

Under the facts of this case, no overpayment should accrue since the initial decision of a representative awarding benefits was affirmed by an administrative law judge. While the EAB's decision did not deny benefits to the claimant, and instead the denial occurred after the remand, the rule does not state the decision by the EAB has to a denial on the merits of the case.

This interpretation is supported by the decision in *Reichl v. IDJS*, 333 N.W.2d 836 (Iowa 1983), a case factually close to this case. In *Reichl*, a representative's decision granting benefits on the basis that the claimant's discharge was not for misconduct was affirmed by a hearing officer. The employer appealed to the appeal board. The appeal board affirmed the decision that there was no misconduct proven but remanded the case for a determination on the issue of whether the claimant had refused an offer of suitable work. Benefits continued being paid to the claimant. The agency disqualified the claimant for refusing suitable work, which led to the claimant being determined overpaid for all the benefits he had received from the time he applied for benefits up when the refusal disqualification was issued. The Iowa Supreme Court ruled that 871 IAC 23.43(3) (commonly referred to as the double-affirmance rule) applied because there were two decisions allowing benefits, which continued the payment of benefits. The Court expressly stated that it did not matter that the appeal board's decision was not a denial of benefits but instead was a remand for further proceedings. The same principles apply in this case. The claimant is not required to repay the \$11,426.00 she received.

Because no overpayment accrues under 871 IAC 23.43(3), it is unnecessary to decide if recovery of the overpayment of the overpayment should be waived under Iowa Code § 96.3-7 because the employer did not participate in the fact-finding interview.

DECISION:

The unemployment insurance decision dated January 17, 2013, reference 01, is reversed. No overpayment should accrue in this case because of the application of the double affirmance rule.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll