

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRITTANY J DAVIS**  
Claimant

**APPEAL 17A-UI-08682-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 02/05/17  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from August 11, 2017 (reference 05) unemployment insurance decision that found claimant was overpaid benefits in the amount of \$439.00 for two weeks between July 9, 2017 and July 22, 2017. Claimant was properly notified of the hearing. A telephone hearing was held on September 15, 2017. The claimant, Brittany J. Davis, participated personally.

**ISSUES:**

Is the claimant's appeal timely?  
Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed her appeal on August 15, 2017 and then filed another appeal on August 24, 2017. Claimant's second appeal was incorrectly docketed as the initial appeal date; however, claimant's initial appeal date was actually August 15, 2017.

The claimant received benefits in the amount of \$439.00 for two weeks between July 9, 2017 and July 22, 2017. The overpayment issue in this case was created by a disqualification decision that has been affirmed.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

The first issue in this case is whether the claimant filed a timely appeal. Claimant filed her appeal on August 15, 2017 and then filed another appeal on August 24, 2017. Claimant's second appeal was incorrectly docketed as the initial appeal date; however, claimant's initial

appeal date was actually August 15, 2017, which was within the time-period for her to file a timely appeal.

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

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. Iowa Code § 96.6(2). In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant did file a timely appeal on August 15, 2017. The next issue involves whether claimant is overpaid 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) 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 § 96.8, subsection 5.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$439.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been affirmed.

**DECISION:**

The August 11, 2017 (reference 05) unemployment insurance decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$439.00 to which she was not entitled. Those benefits must be recovered in accordance with Iowa law.

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Dawn R. Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs