

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TONY O PREWITT  
202 CONCERT  
KEOKUK IA 52632

IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT

Appeal Number: 06A-UI-00114-SWT  
OC: 06/05/05 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Appeal  
Section 96.5-7 - Vacation Pay

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 21, 2005, reference 03, that concluded he was overpaid \$302.00 for the week ending October 8, 2005, due to the receipt of vacation pay. A telephone hearing was held on January 19, 2005. The claimant participated in the hearing. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant filed an additional claim for unemployment insurance benefits with an effective date of October 2, 2005. The employer submitted a completed notice of claim that reported the claimant had received \$571.41 in vacation pay for the period from October 4 to 10, 2005. The agency sent a notice of reportable income to the claimant on October 13, 2005, giving the

claimant an opportunity to respond to the information the employer submitted before a decision was made. The claimant mailed a response disagreeing with the information supplied by the employer on October 17, 2005.

An unemployment insurance decision was mailed to the claimant's last-known address of record on October 21, 2005. The decision concluded he was overpaid \$302.00 for the week ending October 8, 2005, due to the receipt of vacation pay and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by October 31, 2005.

The claimant received the decision within the ten-day period for appealing the decision. He did not appeal the decision by October 31, 2005, because he considered the response he had submitted on October 17, 2005, to be his appeal. He filed a written appeal on January 3, 2006, when he was told that his appeal was not received.

#### REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision 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 after the deadline for appealing expired. The document the claimant submitted before the decision was even issued cannot be considered an appeal but was simply a response to the employer's information.

The 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) would excuse the delay in filing an appeal. Since the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

#### DECISION:

The unemployment insurance decision dated October 21, 2005, reference 03, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision concluding the claimant was overpaid \$302.00 in unemployment insurance benefits remains in effect.

saw/kjw