

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAUL VAZQUEZ
Claimant

APPEAL 18A-UI-04163-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 09/17/17
Claimant: Appellant (3)

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 the March 8, 2018 (reference 06) unemployment insurance decision that found claimant was overpaid benefits of \$490.00 for one week between February 11, 2018 and February 17, 2018 due to a decision that disqualified him for failing to report as directed. Claimant was properly notified of the hearing. A telephone hearing was held on April 27, 2018. The claimant participated personally. CTS Language Link provided language interpretation services to the claimant. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the claimant file a timely appeal?
Is the claimant overpaid benefits?

FINDINGS OF FACT:

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

The claimant filed an initial claim for unemployment insurance benefits with an effective date of September 17, 2017. A decision finding that he was overpaid benefits of \$490.00 for February 11, 2018 through February 17, 2018 was mailed to the claimant on March 8, 2018 (reference 06). An appeal deadline of March 18, 2018 was listed on the decision. Claimant never received this decision in the mail. Claimant filed an appeal on April 4, 2018 when he learned about other decisions that had disqualified him from receipt of benefits.

The claimant received benefits of \$490.00 for one week between February 11, 2018 and February 17, 2018. However, the disqualification decision regarding the overpayment for February 11, 2018 through February 17, 2018 was from a decision dated March 7, 2018 (reference 03) which found that claimant was not able to and available for work. The decision which found claimant failed to report as directed was issued on March 7, 2018 (reference 04) and denied benefits effective February 25, 2018. Claimant did receive benefits of \$490.00 for one week between February 25, 2018 and March 3, 2018. The overpayment issue in this case

was created by a disqualification decision that has been affirmed. See Appeal 18A-UI-04161-DB-T.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did 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.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that 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).

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or

postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant has established that he never received the decision dated March 8, 2018 (reference 06). As such, he has established a good cause reason for failure to comply with the jurisdictional time limit to file an appeal. Iowa Admin. Code r. 871-24.35(2). His appeal shall be considered timely.

The next issue is whether the claimant is overpaid benefits due to the disqualification decision that found he failed to report as directed.

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 of \$490.00 pursuant to Iowa Code § 96.3(7). However, the unemployment insurance decision dated March 8, 2018 (reference 06) incorrectly listed the date of the overpayment to be February 11, 2018 through February 17, 2018. The claimant has actually been overpaid benefits of \$490.00 for the benefit beginning February 25, 2018 through March 3, 2018 as the disqualification decision that created the overpayment decision has been affirmed. See Appeal 18A-UI-04161-DB-T.

DECISION:

The claimant filed a timely appeal. The March 8, 2018 (reference 06) unemployment insurance decision is modified in favor of respondent. The claimant has been overpaid unemployment insurance benefits of \$490.00 for the benefit week of February 25, 2018 through March 3, 2018. Those benefits must be recovered in accordance with Iowa law.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs