

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON BELL ECKERMAN
Claimant

APPEAL NO: 10A-UI-00619-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/04/09
Claimant: Appellant (1)

Iowa Code § 96.3-7 - Overpayment
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Shannon Bell Eckerman (claimant) appealed an unemployment insurance decision dated December 1, 2009, reference 03, which held that she was overpaid \$1,243.08 in unemployment insurance benefits. After a hearing notice was mailed to the party's last-known address of record, a telephone hearing was held on February 22, 2010. The claimant participated in the hearing. Exhibit D-1 was admitted into evidence. The timeliness issue was inadvertently left off the hearing notice but the claimant waived formal notice so the issue could be addressed in the hearing today. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's appeal is timely, and if so, whether the claimant was overpaid \$1,243.08 in unemployment insurance benefits for the 11-week period ending October 3, 2009?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: An overpayment decision was mailed to the claimant's last-known address of record on December 1, 2009. The claimant moved after Thanksgiving and did not receive the decision in a timely manner. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 11, 2009. The appeal was not filed until January 7, 2010, which is after the date noticed on the disqualification decision.

The overpayment issue in this case was created by a disqualification decision that has now been affirmed. The claimant did receive benefits in the amount of \$1,243.08.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). She did file an appeal immediately upon receiving the overpayment decision. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant has been overpaid unemployment insurance benefits.

Iowa Code § 96.3-7, as amended in 2008, provides:

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 section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$1,243.08 pursuant to Iowa Code § 96.3-7 as the ineligibility decision that created the overpayment decision has now been affirmed.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated December 1, 2009, reference 03, is affirmed. The claimant was overpaid unemployment insurance benefits in the amount of \$1,243.08.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs