

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEN E DRAPER
Claimant

APPEAL NO: 06A-UI-08200-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA MOLD TOOLING CO INC
Employer

**OC: 06-18-06 R: 02
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 26, 2006, reference 04, decision that found the claimant overpaid benefits for the four week period ending July 15, 2006. After due notice was issued, a hearing was held on September 7, 2006. Claimant participated and was represented by Mark Young, Attorney at Law. Department's Exhibit D-1 was received.

ISSUE:

The issue is whether claimant's appeal is timely and if he is overpaid benefits.

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: An overpayment decision was mailed to the claimant's address of record on July 26, 2006. The claimant did receive the decision within the appeal period and filed an appeal by postal service on August 1, 2006 prior to the August 5, 2006 appeal deadline. After claimant did not receive communication from Iowa Workforce Development, his spouse called and determined that the appeal had not been delivered. Claimant then immediately filed an appeal by facsimile on August 15, 2006.

The overpayment issue in this case was created by the disqualification decision that has now been reversed.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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

The claimant filed an appeal in a timely manner but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the appeal shall be accepted as timely.

The administrative law judge concludes claimant has not been overpaid benefits.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$1,291.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has now been reversed.

DECISION:

The July 26, 2006, reference 04, decision is reversed. Claimant's appeal is timely and he is not overpaid benefits.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs