

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT A JURGENSMEIER
Claimant

APPEAL 21A-UI-12971-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/21/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated May 15, 2021, (reference 03) that concluded the claimant was overpaid unemployment insurance benefits as a result of a disqualification decision. The claimant waived notice of the hearing on the record. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on July 15, 2021, and was consolidated with the hearing for appeals 21A-UI-11961-S2-T, 21A-UI-12970-S2-T, and 21A-UI-12972-S2-T. The claimant participated personally. The administrative law judge took official notice of the administrative record.

ISSUES:

The issue is whether the claimant's appeal is timely.
The issue is whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 11, 2021, Iowa Workforce Development (IWD) issued a decision (reference 02) that denied claimant UI benefits. That decision has been affirmed. See 21A-UI-12970-S2-T. Claimant did receive benefits in the gross amount of \$3,072.00.

A disqualification decision was mailed to claimant's last known address of record on May 15, 2021. Claimant received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 25, 2021. The appeal was filed on May 24, 2021, prior to the deadline.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant's appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal is timely.

Iowa Code section 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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant received the decision within ten days of its mailing. He filed his appeal on May 24, 2021, prior to the May 25, 2021, deadline. The appeal is timely.

The next issue is whether claimant was overpaid unemployment insurance benefits. For the following reasons the administrative law judge concludes he was overpaid.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

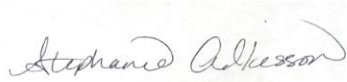
a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by 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) (a) 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 been overpaid unemployment insurance benefits in the amount of \$3,072.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been affirmed.

DECISION:

The appeal is timely. The decision of the representative dated May 15, 2021, (reference 03) is affirmed. The claimant was overpaid regular state unemployment insurance benefits in the amount of \$3,072.00 to which he was not entitled and those benefits must be recovered in accordance with the law.



Stephanie Adkisson
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July 27, 2021
Decision Dated and Mailed

sa/mh