

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRANDON KRUSE
Claimant

APPEAL NO. 21A-UI-04899-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/26/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On February 5, 2021 the claimant appealed the November 16, 2020 (reference 04) decision that concluded the claimant was overpaid benefits in the amount of \$3,704.00 for the eight-week period ending June 2, 2020, as a result of a disqualification decision. A telephone hearing was held on April 15, 2021, pursuant to due notice. The claimant, Brandon Kruse, participated. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant's appeal timely?
Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The overpayment issue in this case was created by a disqualification decision that has now been affirmed. (See 21A-UI-04898-ED-T) Claimant did receive benefits in the gross amount of \$3,704.00.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

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

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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

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. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). 00194 Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Claimant states that he did not receive the decision until February 4, 2021, and filed his appeal immediately the next day. Claimant's appeal is timely.

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.

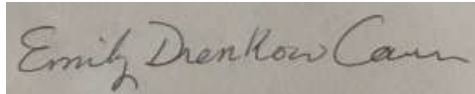
b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed

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 regular state unemployment insurance benefits in the amount of \$3,704.00 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision has been affirmed.

DECISION:

The November 16, 2020 (reference 04) over payment decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the gross amount of \$3,704.00 to which he was not entitled and those benefits must be recovered in accordance with Iowa law.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

April 29, 2021
Decision Dated and Mailed

ed/kmj

NOTE TO CLAIMANT: You may find additional information about food, housing, and other resources by dialing 211 or at <https://dhs.iowa.gov/node/3250>