

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL J MAHER
Claimant

APPEAL NO. 11A-UI-14840-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT

OC: 02/01/09
Claimant: Appellant (1)

Iowa Code Section 96.3(7) - Overpayment
Iowa Code Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Paul Maher filed an appeal from the October 21, 2011, reference 05, decision that he was overpaid \$222.00 for the week ending January 30, 2010 due to receipt of total temporary disability benefits. After due notice was issued, a hearing was held on December 8, 2011. Mr. Maher participated. The hearing in this matter was consolidated with the hearing record in Appeal Numbers 11A-UI-14837-JTT, 11A-UI-14838-JTT, and 11A-UI-14339-JTT. Department Exhibits D-1 through D-8 were received into evidence.

ISSUES:

Whether Mr. Maher's appeal from the October 21, 2011, reference 05, overpayment decision was timely. It was.

Whether Mr. Maher was overpaid \$222,00 for the week ending January 30, 2010. He was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 21, 2011, Iowa Workforce Development mailed a copy of the October 21, 2011, reference 05 overpayment to Paul Maher's last-known address of record. Mr. Maher received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 31, 2011. On October 28, 2011, Mr. Maher hand-delivered an appeal letter to the staff at the Des Moines Workforce Development Center. The Appeals Section received the appeal letter on November 7, 2011.

Mr. Maher established an original claim for benefits that was effective February 1, 2009 and received benefits. Those benefits included \$222.00 for the week that ended January 30, 2010. On March 19, 2010, a Workforce Development representative entered the reference 04 decision that denied benefits for the week ending January 30, 2010. Mr. Maher did not file a timely appeal from the reference 04 decision and it became a final Agency decision. See Appeal Number 11A-UI-14839-JTT.

REASONING AND CONCLUSIONS OF LAW:

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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed 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 was 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. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The evidence establishes that Mr. Maher delivered his appeal to the Des Moines Workforce Development Center three days before the appeal deadline. Any delay in forwarding or docketing the appeal was attributable to the Des Moines Workforce Development Center staff. See 871 IAC 24.35(2). The appeal from the overpayment decision was timely and the administrative law judge had jurisdiction to rule on the merits of the appeal.

Iowa Code section 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.

Because the decision that denied benefits for the week ending January 30, 2010 has become a final Agency decision, the administrative law judge concludes that Mr. Maher was indeed overpaid \$222.00 for the week ending January 30, 2010. Mr. Maher must repay that amount to Iowa Workforce Development.

DECISION:

The claimant's appeal from the October 21, 2011, reference 05, overpayment decision was timely. That decision is affirmed. The claimant was overpaid \$222.00 for the week ending January 30, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css