

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANN BONANNO
Claimant

APPEAL NO: 21A-UI-15199-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 20, 2021, (reference 02) unemployment insurance decision that concluded she was overpaid \$1,104.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on September 24, 2021, at 11:05 a.m. The hearing was held jointly with appeal 21A-UI-15198-SN-T and 21A-UI-151200-SN-T. The claimant participated. Official notice of the administrative records was taken.

ISSUES:

Whether the claimant's appeal is timely? Whether there are other reasonable grounds to be considered timely?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 29, 2020.

The claimant filed for and received a total of \$1,104.00 in regular, state unemployment insurance benefits for the weeks between March 29, 2020 and May 23, 2020. The claimant confirmed she received these benefits.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 21A-UI-15198-SN-T.

A disqualification decision was mailed to claimant's last known address of record on April 21, 2021. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 30, 2021. (Exhibit D-1)

The appeal was not filed until July 6, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

The first notice the claimant received of disqualification was a statement sent to her on May 14, 2021 stating she must repay \$1,104.00 in unemployment insurance benefits. The claimant did not become aware of this statement until early June 2021, when she returned from a trip just after Memorial Day.

In mid-June 2021, the claimant spoke with an Iowa Workforce Development representative who informed her of the April 20, 2021, reference 00, decision. The claimant attempted to file online through Iowa Workforce Development's online appeal portal for the next two weeks. On July 6, 2021, the claimant spoke with a clerk in the Appeals Bureau, who helped her file an appeal.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant's appeal is otherwise timely. He further concludes the claimant was overpaid regular unemployment insurance benefits.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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, subsections 10 and 11, 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 issued, 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 did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without 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). Arguably, the claimant received notice of disqualification in mid-May, when she received a statement regarding overpayment of benefits. The administrative law judge does not believe this is the relevant period because she was not informed of appeal rights on this

document. The claimant was informed of the decisions adverse to her claim in mid-June 2021. The claimant could not get Iowa Workforce Development's online appeal portal to work over the next two weeks. The claimant appealed on July 6, 2021 after overcoming many obstacles in the way of her ability to appeal.

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

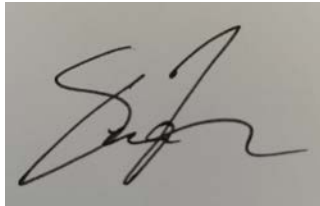
7. Recovery of overpayment of benefits.

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.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$1,104.00 in unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated April 20, 2021, reference 02, is affirmed. The claimant was overpaid \$1,104.00 in regular, state unemployment insurance benefits.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

September 30, 2021
Decision Dated and Mailed

smn/scn