

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEX W KINGERY
Claimant

APPEAL NO. 13A-UI-11151-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/30/12
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant, Alex Kingery, filed an appeal from a decision dated September 18, 2013, reference 03. The decision found him overpaid \$5,501.66 in unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 24, 2013. The claimant participated on his own behalf. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last known address of record on September 18, 2013. The claimant received the decision on October 1, 2013. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 28, 2013. The appeal was not filed until October 2, 2013, which is after the date noticed on the decision.

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

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

The appeal was filed the day after it was received and shall be accepted as timely.

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.

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. . . .

The administrative law judge concludes that the claimant is not overpaid unemployment insurance benefits in the amount of \$5,501.66 pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now been reversed.

DECISION:

The decision of the representative dated September 18, 2013, reference 03, is reversed. Alex Kingery is not overpaid \$5,501.66.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css