

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PRISCILLA J THOMPSON
Claimant

APPEAL NO. 09A-UI-00240-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07-23-06 R: 04
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant appealed the December 24, 2008, reference 02, decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$1,108.00 for the four-week period ending August 19, 2006 as a result of an ineligibility decision. A telephone hearing was scheduled to be held on January 22, 2008, pursuant to due notice. The claimant did participate.

ISSUES:

The issue is whether claimant was overpaid unemployment insurance benefits.

Did the claimant file a timely appeal?

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 the ineligibility decision that has now been reversed.

The claimant received the fact-finding decision dated December 24, 2008 on Monday, December 29, 2008. She did not understand why severance pay was being deducted from her extended unemployment insurance benefits since she had received benefits in 2006 and 2007 and no deduction was made. In an effort to understand the fact-finding decision (no fact-finding interview was held), the claimant called her local office on December 30 and was told that she needed to speak to Tom in the investigation unit. The claimant called Tom on December 30, December 31, January 2 and January 5 and left multiple voice mail messages for him asking him to return her call. The claimant waited all day on January 5 for Tom to return her call knowing that her appeal was due on January 5. On January 5, the claimant drafted her appeal letter and took it to the post office where it was not postmarked until January 6, 2009. Tom did not return the claimant's phone call on January 5. When the claimant eventually spoke to Tom on January 6, she was told that she needed to file an appeal with the Appeals Section of Iowa Workforce Development and that he could not assist her.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 claimant did receive the fact-finder's decision with enough time to file a timely appeal. She delayed in filing her appeal because she was erroneously told by an Iowa Workforce Development employee that she needed to speak to Tom to clear up the matter. The claimant did not need to speak to Tom she needed to file an appeal. The claimant diligently attempted to reach Tom, but by the time he returned her telephone calls, her appeal was late. She filed her appeal immediately upon learning that she needed to do so. Thus, the administrative law judge will consider her appeal timely.

The administrative law judge concludes claimant has not been overpaid benefits.

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 states pursuant to section 602.10101.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$1,108.00 pursuant to Iowa Code section 96.3(7) as the ineligibility decision that created the overpayment decision has now been reversed.

DECISION:

The December 24, 2008, reference 02, decision is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$1,108.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css