

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANNON JOHNSON
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 23A-UI-08708-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/18/23
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Shannon Johnson, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) September 7, 2023 (reference 04) unemployment insurance (UI) decision. IWD concluded that IWD overpaid Ms. Johnson REGULAR (state) UI benefits in the total gross amount of \$525.00 for the week of July 2-8, 2023 because the August 15, 2023 (reference 03) UI decision denied her UI benefits for this week. On September 14, 2023, the Iowa Department of Inspections, Appeals and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing Ms. Johnson and IWD for a telephone hearing scheduled for September 28, 2023.

The undersigned administrative law judge held a telephone hearing on September 28, 2023. Ms. Johnson participated in the hearing personally. IWD did not participate in the hearing. The undersigned took official notice of the administrative record and the record in Appeal 23A-UI-08708-DZ-T.

ISSUES:

Did Ms. Johnson appeal on time?

Did IWD overpay Ms. Johnson REGULAR (state) UI benefits in the total gross amount of \$525.00 for the week of July 2-8, 2023?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the undersigned finds: IWD mailed the September 7, 2023 (reference 04) UI decision to Ms. Johnson at her correct address. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Sunday, September 17, 2023. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, it is extended to the next working day. So, the appeal deadline was extended to Monday, September 18, 2023.

Ms. Johnson received the decision in the mail. Ms. Johnson appealed via fax on September 12, 2023. The DIAL UI Appeals Bureau received the appeal the same day.

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

The undersigned further finds Ms. Johnson filed an initial claim for REGULAR (state) UI benefits effective June 18, 2023. IWD set her weekly UI benefit amount at \$525.00 before taxes, if any, are withheld. In relevant part, Ms. Johnson filed a weekly UI claim for the week of July 2-8, 2023 and reported \$0.00 in wages for this week. IWD sent Ms. Johnson REGULAR (state) UI benefits of \$525.00 for this week.

After IWD had already sent her the money, IWD mailed Ms. Johnson an August 15, 2023 (reference 03) UI decision denying her REGULAR (state) UI benefits for this week. Ms. Johnson appealed this decision. The Administrative Law Judge Decision in Appeal 23A-UI-08707-DZ-T found that Ms. Johnson did not appeal this decision on time and affirmed the reference 03 UI decision. This means Johnson is not eligible for REGULAR (state) UI benefits for the week of July 2-8, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. Johnson appealed the September 7, 2023 (reference 04) UI decision on time.

Iowa Code § 96.6(2) provides, in relevant 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:

2. 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:
 - (2) 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.² Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.³

The deadline to appeal the reference 04 UI decision was September 17, 2023. Ms. Johnson appealed on September 12, 2023. Ms. Johnson appealed on time.

The undersigned further concludes that IWD overpaid Ms. Johnson REGULAR (state) UI benefits in the total gross amount of \$525.00.

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.

IWD sent Ms. Johnson REGULAR (state) UI benefits for the week of July 2-8, 2023. After IWD had already sent her the money, IWD found Ms. Johnson not eligible to receive UI benefits for this week per the August 15, 2023 (reference 03) UI decision. The Administrative Law Judge Decision in Appeal 23A-UI-08707-DZ-T affirmed this decision. Since IWD sent Ms. Johnson \$525.00 in UI benefits but she is not eligible for these benefits, IWD overpaid Ms. Johnson \$525.00 in UI benefits. Ms. Johnson is required to repay these benefits back to IWD.

² *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *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).

DECISION:

Ms. Johnson appealed the September 7, 2023 (reference 04) UI decision on time. The September 7, 2023 (reference 04) UI decision is AFFIRMED. IWD overpaid Ms. Johnson REGULAR (state) UI benefits in the total gross amount of \$525.00 for the week of July 2-8, 2023. Ms. Johnson is required to repay these benefits to IWD.



Daniel Zeno
Administrative Law Judge

September 29, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.