

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARCELLA V TURLEY
Claimant

APPEAL 22A-UI-07941-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Filing – Timely Appeal
PL 116-136, Sec 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On March 24, 2022, Marcella Turley (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 2, 2022 (reference 06) that determined claimant was overpaid Federal Pandemic Unemployment Compensation in the amount of \$600.00 for the one week between March 29 and April 4, 2020 based on a failure to report wages.

A telephone hearing was held on May 13, 2022. The parties were properly notified of the hearing. Claimant participated personally. Appeal Nos. 22A-UI-07940-AD-T and 22A-UI-07941-AD-T are related and were heard together, forming a single hearing record. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the claimant overpaid Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The decision which led to the finding claimant was overpaid FPUC has now been reversed. See 22A-UI-07940-AD-T.

The Unemployment Insurance Decision was mailed to claimant at the address 723 SE 5TH CT ANKENY IA 50021 6407 on March 2, 2022. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 12, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on March 24, 2022.

The delay in appealing was due to claimant moving to a new address and USPS delay in forwarding it to her new address. Claimant moved from the Ankeny address in August 2021 and

had her mail forwarded to her new address. Claimant appealed the decision immediately upon receiving it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated March 2, 2022 (reference 06) that determined claimant was overpaid Federal Pandemic Unemployment Compensation in the amount of \$600.00 for the one week between March 29 and April 4, 2020 based on a failure to report wages is REVERSED.

Iowa Code § 96.6(2) provides, in pertinent 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)(a) provides:

1. 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:
 - (a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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 administrative law judge finds the delay in appealing was due to USPS error or delay. Claimant filed the appeal as soon as she received the decision. The administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

PL 116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as “Federal Pandemic Unemployment Compensation”).

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency, except that the State agency may waive such repayment if it determines that –

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

The decision which led to the finding claimant was overpaid FPUC has now been reversed. See 22A-UI-07940-AD-T. As such this decision finding claimant was overpaid FPUC as a result must also be reversed.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated March 2, 2022 (reference 06) that determined claimant was overpaid Federal Pandemic Unemployment Compensation in the amount of \$600.00 for the one week between March 29 and April 4, 2020 based on a failure to report wages is REVERSED. Claimant was not overpaid FPUC during the period in question.



Andrew B. Duffelmeyer
Administrative Law Judge

May 17, 2022
Decision Dated and Mailed

abd/abd