

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL J MCLACHLAN
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL 20A-UI-03771-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

On May 6, 2020, Michael McLachlan (claimant/appellant) filed an appeal from the April 24, 2020 (reference 02) unemployment insurance decision that denied benefits.

A telephone hearing was held on May 26, 2020, at 1 p.m. The parties were properly notified of the hearing. Claimant participated personally. Employer participated by hearing representative Mai Lor. Recruiter Janine Morazan participated as a witness for employer.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the claimant overpaid benefits?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on April 24, 2020. That was claimant's correct address on that date. Claimant testified that he did not receive a copy of the decision until May 7, 2020, and that it had a postmark of May 5, 2020. Claimant did not provide a copy of the envelope containing the decision.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by May 4, 2020. 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 online on May 6, 2020.

Claimant testified that he believes the Department purposely delayed in sending him the April 24, 2020 fact-finding decision so as to prevent him from filing a timely appeal. Claimant also testified he did not learn that he was ineligible for benefits until receiving the decision on May 7, 2020.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$133.00 for a total of six weeks, from the benefit week ending March 14, 2020 and continuing through the benefit week ending April 18, 2020. The total amount of benefits paid to date is \$798.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of two weeks, from the benefit week ending April 11, 2020 and continuing through the benefit week ending April 18. The total amount of FPUC benefits paid to date is \$1,200.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely.

I. Is the appeal timely?

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.

(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.”

Claimant’s appeal was not submitted until two days after the deadline for submission. Claimant testified that he believes the Department purposely did not send him the April 24, 2020 fact-finding decision in a timely manner so as to prevent him from filing a timely appeal. Claimant also testified he did not learn that he was ineligible for benefits until receiving the decision on May 7, 2020. However, he filed the appeal a day earlier, on May 6, 2020. The administrative law judge does not find the testimony offered by claimant in this regard to be credible or reliable. Claimant has failed to establish good cause for the late submission.

Because claimant has not shown the delay in appealing was due to agency error or misinformation, delay of the United States Postal Service, or some other good cause reason, the administrative law judge finds the appeal to be untimely. Because the appeal is untimely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

II. Was the claimant overpaid benefits?

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) (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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$133.00 for a total of six weeks, from the benefit week ending March 14, 2020 and continuing

through the benefit week ending April 18, 2020. The total amount of benefits paid to date is \$798.00.

Because the administrative law judge finds the appeal is untimely and the decision finding claimant ineligible for benefits remains in effect, the claimant has been overpaid benefits in the amount of \$798.00. Benefits shall be recovered. 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.

III. Is the claimant eligible for federal pandemic unemployment compensation?

PL116-136, 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...

The unemployment insurance system shows claimant has received FPUC benefits in the amount of \$600.00 for a total of two weeks, from the benefit week ending April 11, 2020 and continuing through the benefit week ending April 18. The total amount of FPUC benefits paid to date is \$1,200.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC benefits. Claimant has been overpaid FPUC benefits in the amount of \$1,200.00. Claimant is required to repay those benefits.

DECISION:

The April 24, 2020, (reference 02) unemployment insurance decision remains in full force and effect, as the appeal is untimely. The appeal is dismissed.

Claimant has been overpaid benefits in the amount of \$798.00. Benefits shall be recovered. 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.

Claimant has been overpaid FPUC benefits in the amount of \$1,200.00. Claimant is required to repay those benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 28, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.