

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LORENZO J KEAHEY
Claimant

APPEAL NO. 21A-UI-07044-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/05/20
Claimant: Appellant (1R)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Public Law 116-136, Section 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant filed a late appeal from the January 19, 2021 (reference 04) decision that held he was overpaid \$1,800.00 in Federal Pandemic Unemployment Compensation (FPUC) for the three weeks between April 5 2020 and April 25, 2020, based on the reference 02 decision that disqualified the claimant for benefits. After due notice was issued, a hearing was held on April 24, 2021. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-07043-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KPY1, NMRO, the January 20, 2021 (reference 03) decision, the January 19, 2021 (reference 04) decision, the July 8, 2020 (reference 02) decision, the administrative law judge decision in Appeal Number 20A-UI-08289-S1-T, and the September 15, 2020 decision that allowed Pandemic Unemployment Assistance (PUA) effective May 3, 2020.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely. Whether the claimant was overpaid \$1,800.00 in Federal Pandemic Unemployment Compensation (FPUC) for the three weeks between April 5 2020 and April 25, 2020, based on the reference 02 decision that disqualified the claimant for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective April 5, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$500.00. The claimant received \$6,476.00 in regular benefits for the 13 weeks between April 5, 2020 and July 4, 2020. The claimant also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the 13 weeks in question. The FPUC benefits paid to the claimant included \$1,800.00 in FPUC benefits paid for the three weeks between April 5, 2020 and April 25, 2020.

On July 8, 2020, Iowa Workforce Development issued the reference 02 decision that denied regular benefits for the period beginning April 5, 2020, based on an Agency determination that the claimant had requested and was granted a leave of absence, was voluntarily unemployed and was not available for work. The July 8, 2020, reference 02, decision prompted the overpayment decisions from which the claimant appeals in the present matter and the companion appeal number.

The claimant filed an appeal from the July 8, 2020, reference 02, decision. On August 26, 2020, the claimant participated in an appeal hearing in Appeal Number 20A-UI-08289-S1-T. The claimant asserts the administrative law judge advised him to file an application for Pandemic Unemployment Assistance (PUA). While the claimant makes the further assertion that the administrative law judge told him that PUA benefits “would take care of the back pay” of regular benefits, the administrative law judge would not have made any such statement. On August 27, 2020, the Appeals Bureau mailed the administrative law judge’s decision to the claimant. The administrative law judge affirmed the denial of regular benefits effective April 5, 2020 and the determination that the claimant was not available for work effective April 5, 2020. The claimant did not appeal the administrative law judge’s decision and the decision became final.

On September 15, 2020, Iowa Workforce Development issued an Assessment for PUA Benefits that allowed Pandemic Unemployment Assistance (PUA) benefits in the amount of \$481.00 for the period beginning May 3, 2020. IWD had not yet issued PUA benefits and has not yet taken steps to offset the regular benefits paid to the claimant against the PUA benefit eligibility.

IWD did not approve the claimant for PUA benefits for the four-week period of April 5, 2020 through May 2, 2020.

On January 19, 2021, Iowa Workforce Development mailed the January 19, 2021 (reference 04) decision to the claimant at his Ankeny last-known address of record. The reference 04 decision held the claimant was overpaid \$1,800.00 in Federal Pandemic Unemployment Compensation Benefits for three weeks between April 5, 2020 and April 25, 2020, based on the earlier reference 02 decision that disqualified the claimant for regular benefits for the affected period. The reference 04 decision stated that the decision would become final unless an appeal from the decision was postmarked by January 29, 2021 or was received by the Appeals Bureau by that date. The claimant received the reference 04 decision in a timely manner, prior to the deadline for appeal. The decision included clear and concise instructions for filing an appeal from the decision.

On January 20, 2021, Iowa Workforce Development mailed the January 20, 2021 (reference 03) decision to the claimant at his Ankeny last-known address of record. The reference 03 decision held the claimant was overpaid \$6,476.00 in regular benefits for 13 weeks between April 5, 2020 and July 4, 2020, based on a July 8, 2020 decision that disqualified the claimant for regular benefits in connection with a determination that the claimant was not able to work or available for work. The reference 03 decision stated that the decision would become final unless an appeal from the decision was postmarked by January 30, 2021 or was received by the Appeals Bureau by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. January 30, 2021 was a Saturday and the next working day was Monday February 1, 2021. The claimant received the reference 03 decision in a timely manner, prior to the deadline for appeal. The decision included clear and concise instructions for filing an appeal from the decision.

The claimant did not file an appeal from either decision by the applicable deadline. The claimant advises that he contacted Iowa Workforce Development in response to receiving the decisions. While the claimant asserts an Iowa Workforce Development representative told him the decisions were a mistake and not to worry about filing an appeal, IWD would personnel would not have told the claimant to disregard the decisions or to forego filing an appeal from the decisions.

On or about March 9, 2021, the claimant spoke to an Iowa Workforce Development representative who reinforced that the overpayment decisions meant what they said. On March 9, 2021, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal on March 9, 2021.

REASONING AND CONCLUSIONS OF LAW:

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, subsections 10 and 11, 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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed 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 was

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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *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). One question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The claimant's appeal from the January 20, 2021 (reference 03) overpayment decision was untimely. The claimant received the decision in a timely manner and had a reasonable opportunity to file an appeal by the deadline. The weight of the evidence fails to support the claimant's assertion that he delayed filing an appeal from the overpayment decisions because of statements made by IWD representatives. The claimant's assertion that an IWD representative told him the decision was a mistake and to disregard the overpayment decision is not credible. This non-credible assertion was in keeping with other non-credible assertions the claimant made, such as the assertion that the administrative law judge told him at the August 26, 2020 appeal hearing in Appeal Number 20A-UI-08289-S1-T that PUA benefits "would take care of the back pay" of regular benefits. Because the evidence establishes that the failure to file a timely appeal was not attributable to IWD error or misinformation or delay or other action of the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the overpayment decision from which the claimant appeals in this matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

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, 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.

(3) Recovery by state agency —

(A) In general.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations

under the State unemployment compensation law, and only in that manner and to that extent.

The July 8, 2020 (reference 02) decision disqualified the claimant for regular benefits effective April 5, 2020, based on the Agency conclusion that the claimant was on a leave of absence that he requested, was voluntarily unemployed and was not available for benefits. The reference 02 decision was affirmed on appeal. In addition, Assessment for PUA Eligibility decision allowed PUA benefits for the period beginning May 3, 2020, but not for the four weeks between April 5, 2020 and May 2, 2020. Thus, even if the claimant's appeal in this matter had been timely, the evidence in the record would establish that the \$1,800.00 in FPUC benefits the claimant received for the three weeks between April 5, 2020 and April 25, 2020 was an overpayment of benefits.

DECISION:

The claimant's appeal was untimely. The January 19, 2021 (reference 04) decision is affirmed. The decision that held the claimant was overpaid \$1,800.00 in FPUC benefits for 3 weeks between April 5, 2020 and April 25, 2020 remains in effect.

This decision does nothing to disturb the September 15, 2020 Assessment for PUA Benefits decision that allowed PUA benefits for the period beginning May 3, 2020.

This matter is remanded to the Benefits Bureau for determination of whether the claimant was overpaid \$600.00 in FPUC benefits for the week that ended May 2, 2020. Based on the jurisdictional determination in this decision, the administrative law judge was unable to further address the apparent FPUC overpayment for the week that ended May 2, 2020.



James E. Timberland
Administrative Law Judge

April 28, 2021
Decision Dated and Mailed

jet/ol

Note to Claimant: This decision determines you have been overpaid FPUC under the CARES Act. 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. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.