

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICK F MEDINA
Claimant

APPEAL 21A-UI-24784-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/27/20
Claimant: Appellant (6)

Iowa Code § 96.6(2) - Timeliness of Appeal
PL 116-136, Sec. 2104 - Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On November 3, 2021, claimant/appellant, Erick Medina, filed an appeal from the June 30, 2021, (reference 03) unemployment insurance decision that found claimant was overpaid \$1,200.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for a 4-week period between 12/27/20 and 02/06/21 due to a decision with reference 01, which stated you did not provide proof of citizenship or legal resident to the Agency. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for January 6, 2022 at 11:05AM and the cases were consolidated. The claimant participated. The Department did not participate. Judicial notice was taken of the administrative file.

ISSUES:

Is claimant's appeal timely?
Is the claimant overpaid FPUC benefits?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant's appeal is dated November 3, 2021 and to be timely, needed to be filed on or before July 12, 2021 (due to the weekend). The decision was mailed to claimant's last known address. Claimant had failed to notify Iowa Workforce Development of their most current address. With mail forwarding, claimant got the decision after the deadline. Claimant filed their appeal November 3, 2021, which is after the deadline.

The underlying decision reference 01 which denied benefits was appealed. Appeal No. 21A-UI-05688-JTT kept the underlying decision in effect and dismissed the appeal, as claimant/appellant failed to participate in the hearing. That decision was appealed. The decision in 21B-UI-05688 found the appeal was untimely and kept the decision denying benefits in effect. That decision was not appealed.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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) 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 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. *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).

Appellant did not timely receive the decision in the mail and therefore had no opportunity to file an appeal prior to the appeal deadline. However, the reason for the late arrival was due to appellant failing to provide a current address to send the decision and the delay in Appellant receiving the decision was not due to an error or misinformation from the Department or due to

delay or other action of the United States Postal Service. The delay was in the decision going to the last known address and then being forwarded in addresses until reaching claimant. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

Arguendo, if the appeal is deemed timely, claimant was overpaid FPUC benefits.

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.

Iowa Code section 96.6(3) provides:

3. Appeals. a. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The notice for a telephone or in-person hearing shall be sent to all the parties at least ten calendar days before the hearing date. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

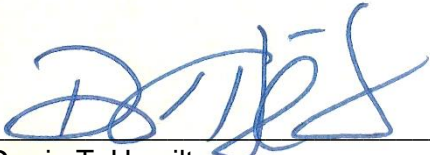
b. Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

Since the decision that disqualifying claimant for these benefits remains in effect, as addressed above, and that decision was not appealed, the claimant was overpaid \$1,200.00 in unemployment insurance benefits.

DECISION:

The June 30, 2021, (reference 03) unemployment insurance decision that found claimant was overpaid \$1,200.00 in FPUC benefits remains in effect and claimant must repay the benefits. The appeal in this case was not timely, and the appeal is **DISMISSED**.

Alternatively, should the appeal be deemed timely, the June 30, 2021, (reference 03) unemployment insurance decision that found claimant was overpaid \$1,200.00 in FPUC benefits is **AFFIRMED** as the decision disqualifying claimant was not appealed from the EAB's decision. Claimant was overpaid \$1,200.00 in FPUC benefits, which must be repaid.



Darrin T. Hamilton
Administrative Law Judge

February 3, 2022
Decision Dated and Mailed

dh/mh

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/federal-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.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>