

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY J KOEHLER
Claimant

APPEAL 22A-UI-07108-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3-7 - Recovery of Overpayment of Benefits
PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

Claimant Kelly J. Koehler filed an appeal from the December 15, 2021, (reference 01) unemployment insurance decision that concluded the claimant was overpaid Pandemic Unemployment Assistance (PUA) benefits. After due notice was issued, a hearing was held by telephone conference call on May 5, 2022, and was consolidated with the hearing for appeal 22A-UI-07110-S2-T. Claimant participated personally. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant's appeal timely?
Is claimant overpaid PUA benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An overpayment decision was mailed to claimant's last known address of record on December 15, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 25, 2021. The appeal was not filed until March 14, 2022, which is after the date noticed on the decision. Claimant received the decision but could not recall why the appeal was filed three months after the deadline.

Claimant filed an application and was approved for Pandemic Unemployment Assistance (PUA) benefits. On July 9, 2020, Iowa Workforce Development (IWD) issued a payment in the gross amount of \$406.00 for the two-week period ending July 4, 2020. On July 16, 2020, IWD issued claimant a payment in the gross amount of \$609.00 for the three-week period ending July 11, 2020. This payment included the \$203.00 payment for the week ending July 11, 2020, but also duplicated the \$406.00 payment for the two-week period ending July 4, 2020, that claimant had just received days earlier. Claimant was inadvertently double paid for the two weeks ending July 4, 2020, due to an agency error.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

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, subsection 10, 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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Here, the record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). Accordingly, there is no good cause to treat the late appeal as a timely appeal. Because the appeal was untimely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal or to disturb the decision from which the claimant appealed. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In the alternative, even if claimant's appeal was accepted as timely, he would still be overpaid PUA benefits for the period in question.

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.

The Pandemic Unemployment Assistance program provides for weekly unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020, and ending on or before December 31, 2020, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19. That period was subsequently extended through the week ending September 4, 2021. See American Rescue Plan Act of 2021. Iowa ended its participation in the program effective June 12, 2021.

Public Law 116-136, Sec. 2102 provides in relevant part:

(h) RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER UNEMPLOYMENT ASSISTANCE.—Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if—

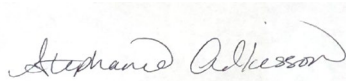
(1) the term “COVID–19 public health emergency” were substituted for the term “major disaster” each place it appears in such section 625; and

(2) the term "pandemic" was substituted for the term "disaster" each place it appears in such section 625.

Claimant did not seek out multiple payments, and it appears this overpayment occurred through no fault of the claimant. Regardless of fault, however, claimant has received PUA benefits to which they were not entitled. Therefore, the administrative law judge concludes that claimant has been overpaid PUA benefits in the amount of \$406.00 for the two-week period ending July 4, 2020. Those benefits are subject to recovery in accordance with Iowa law.

DECISION:

The December 15, 2021, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant was overpaid PUA benefits in the amount of \$406.00 to which he was not entitled, and those benefits must be recovered in accordance with the law.



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

May 25, 2022
Decision Dated and Mailed

sa/scn

NOTE TO CLAIMANT:

- This decision determines you have been overpaid PUA 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.
- You may also request a waiver of this overpayment. The written request must include the following information:
 1. Claimant name & address.
 2. Decision number/date of decision.
 3. Dollar amount of overpayment requested for waiver.
 4. Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319
- This Information can also be found on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.