

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NELVA BOLKEMA
Claimant

APPEAL NO. 21A-UI-20393-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant, Nelva Yvonne Bolkema, filed a late appeal from the June 5, 2021, reference 03, decision that held she was overpaid \$3,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the five-week period of March 29, 2020 through May 2, 2020, based on an earlier overpayment decision that stated she was not eligible or benefits for that period. After due notice was issued, a hearing was held on November 10, 2021. The claimant participated. There were three appeal numbers set for a consolidated appeal hearing: 21A-UI-20391-JTT, 21A-UI-20392-JTT, and 21A-UI-20393-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01, 02 and 03 decisions, the application for PUA benefits, the Assessment for PUA Benefits, NMRO, DBRO, KPYX, KPY1, KCCO, and the record reflecting a \$3,000.00 FPUC overpayment and reflecting recovery of \$580.00 of regular state benefits.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

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 March 29, 2020. Iowa Workforce Development set the weekly benefit amount for regular state benefits at \$116.00. The claimant made weekly claims for each of the five weeks between March 29, 2020 and May 2, 2020 and then discontinued her weekly claims. Iowa Workforce Development paid \$116.00 in regular state benefits for each of the five weeks between March 29, 2020 and May 2, 2020. The benefits were disbursed between April 10, 2020 and May 5, 2020. The regular benefits disbursed to the claimant totaled \$580.00. Iowa Workforce Development also paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits to the claimant for each of the five weeks between March 29, 2020 and May 2, 2020. The FPUC benefits were disbursed between April 21, 2020 and May 6, 2020. The FPUC benefits disbursed to the claimant totaled \$3,000.00.

On April 10, 2020, the claimant applied for Pandemic Unemployment Assistance (PUA) benefits.

On July 9, 2020, Iowa Workforce Development mailed the reference 01 decision to the claimant's Sheldon, Iowa last-known address of record. The reference 01 decision denied regular state benefits for the period beginning March 29, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work within the meaning of the law. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by July 19, 2020 or was received by the Appeals Bureau by that date. The decision included clear and concise instructions for filing an appeal online, by fax or by mail. The included a toll-free telephone number for IWD customer service, a toll-free number for the Appeals Bureau, a fax number for the Appeals Bureau, an email address for the Appeals Bureau, and a mailing address for the Appeals Bureau. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal, but took no steps to file an appeal by the July 19, 2020 deadline.

On July 10, 2020, Iowa Workforce Development mailed the Assessment for PUA Benefits to the claimant. The PUA decision allowed \$203.00 in PUA benefits for the period beginning March 29, 2020. The claimant received the PUA decision close in time to the receiving the reference 01 decision. The claimant was confused by the decisions, but did not immediately contact Iowa Workforce Development for assistance in understanding the decisions.

Iowa Workforce Development has not issued PUA benefits to the claimant. IWD has not issued a second payment of FPUC benefits based on the PUA eligibility determination.

On December 31, 2020, Iowa Workforce Development mailed the December 31, 2020, reference 02, decision to the claimant's last-known address of record. The reference 02 decision held the claimant was overpaid \$580.00 in regular state benefits, due to the earlier decision that denied benefits. The reference 02 decision stated that the decision would become final unless an appeal was postmarked by January 10, 2021 or was received by the Appeals Bureau by that date. The claimant received the decision in a timely manner, but took no steps to file an appeal by the January 10, 2021 deadline. At some point, the claimant sent \$580.00 to Iowa Workforce Development to repay the \$580.00 in regular benefits.

On June 5, 2021, Iowa Workforce Development mailed the June 5, 2021, reference 03, decision to the claimant's last-known address of record. The reference 03 decision held the claimant was overpaid \$3,000.00 in FPUC benefits for the five weeks between March 29, 2020 and May 2, 2020, based on the prior overpayment decision that stated the claimant was not eligible for benefits for the affected period. The reference 03 decision stated that the decision would become final unless an appeal was postmarked by June 15, 2021 or was received by the Appeals Section by that date. The claimant received the decision in a timely manner, but took no steps to file an appeal by the June 15, 2021 deadline.

In July or August 2021, the claimant contacted her son-in-law to enlist his assistance in responding to the decisions the claimant has received. The June 15, 2021 appeal deadline applicable to the FPUC overpayment decision had already passed. After the June 15, 2021 appeal deadline has passed, the claimant contacted Iowa Workforce Development.

On September 15, 2021, the claimant and her son-in-law drafted an appeal letter. On that same day, the claimant emailed her appeal to the Appeals Bureau. The Appeals Bureau received the

appeal on September 15, 2021 and treated it as a late appeal from the reference 01, 02 and 03 decisions.

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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes that the claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the applicable appeal deadline, but unreasonably deferred filing the appeal until September 15, 2021. The weight of the evidence fails to establish that Iowa Workforce Development or the United States Postal Service caused the late filing of the appeal. There is not good cause to deem the claimant's late appeal from any one of the decisions a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal in question was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which claimant appealed. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the June 5, 2021, reference 03, decision is untimely. The decision that held the claimant was overpaid \$3,000.00 in FPUC benefits for the period of March 29, 2020 through May 2, 2020, based on an earlier overpayment decision that stated the claimant was not eligible for benefits for that period remains in effect.

The matter is **remanded** to the Benefits Bureau for processing of the claimant's eligibility for FPUC benefits based on the July 10, 2020, Assessment for PUA Benefits that allowed PUA benefits for the period beginning March 29, 2020.



James E. Timberland
Administrative Law Judge

November 23, 2021
Decision Dated and Mailed

jet/scn

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, if you are not eligible for a waiver, you may have to repay the benefits you received.