

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SHASHI M SINGH
Claimant

APPEAL NO. 22A-UI-13487-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 02/16/20
Claimant: Appellant (1)**

P.L. 116-136, §2107 – Pandemic Emergency Unemployment Compensation Overpayment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On June 3, 2022, Shashi Singh (claimant) filed a late appeal from the May 19, 2022 (reference 02) decision that held the claimant was overpaid \$2,842.00 Pandemic Emergency Unemployment Compensation (PEUC) for 14 weeks ending May 29, 2021, due to the reference 03 decision that denied PEUC benefits. After due notice was issued, a hearing was held on August 4, 2022. Claimant participated and presented additional testimony through Iowa Workforce Development employees Kelly Weyant and Susan Ellenberger. There were three appeal numbers set for a consolidated hearing: 22A-UI-13485-JT-T, 22A-UI-13486-JT-T, and 22A-UI-13487-JT-T. Exhibit A, the appeal packet forwarded to the Appeals Bureau on June 3, 2022, was received into evidence. The administrative law judge took official notice of any and all relevant IWD, including but not limited to records labeled D-1 through D-6 for identification purposes. Department Exhibit D-7 (the appeal packet Ms. Ellenberger forwarded to the administrative law judge on August 3, 2022) was received into evidence. The administrative law judge also took official notice of the following Agency administrative records:

ISSUE:

Whether the appeal was timely.

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

Whether the claimant was overpaid \$2,842.00 Pandemic Emergency Unemployment Compensation (PEUC) for 14 weeks ending May 29, 2021, due to the reference 03 decision that denied PEUC benefits.

FINDINGS OF FACT:

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

Shashi Singh (claimant) has worked as a Lyft and/or Uber independent contractor driver for an extended period and neither earned nor was paid insured wages in 2018, 2019, 2020 or during

the first two quarters of 2021. The claimant also was not paid any insured wages during the third quarter of 2021.

The claimant established an original claim for benefits that Iowa Workforce Development deemed effective February 16, 2020. The base period for said claim consisted of the fourth quarter of 2018 and the first, second and third quarters of 2019. Because the claimant has zero base period wages, the claimant did not meet the monetary eligibility requirements to be considered for regular benefits. On April 4, 2020, Iowa Workforce Development generated an online monetary record that indicated no wage records were available. The monetary record did not set a weekly benefit amount or maximum benefit amount for regular benefits.

Despite the claimant not being monetarily eligible for regular benefits, IWD erroneously set a \$203.00 weekly benefit amount for regular state benefits and commenced paying regular state benefits. That \$203.00 weekly benefit amount is the minimum weekly benefit amount applicable to payment of Pandemic Unemployment Assistance (PUA) benefits. On July 1, 2020, IWD had approved the claimant for \$203.00 in weekly PUA benefits for the period of February 16, 2020 through June 12, 2021. IWD records (DBRO) reflect that IWD paid the claimant \$203.00 in regular state benefits for each of the 14 weeks between February 16, 2020 and May 23, 2020, paid regular benefits for the weeks ending November 21, 2020, and paid regular benefits for the three weeks between January 17, 2021 and February 6, 2021. IWD records (DBRO) reflect that in June 2021 IWD commenced paying the claimant Pandemic Emergency Unemployment Compensation (PEUC) benefits for the period beginning February 21, 2021. IWD paid the claimant \$2,842.00 in PEUC benefits for 14 weeks between February 21, 2021 and May 29, 2021.

On May 19, 2022, Iowa Workforce Development Benefits Bureau entered a reference 03 decision (mislabeled as reference 02), that denied PEUC benefits for the period beginning February 14, 2021. The reference 03 decision prompted the overpayment decision from which the claimant appeals in the present matter. The reference 03 decision has been affirmed in Appeal Number 22A-UI-13485-JT-T.

On May 19, 2022, Iowa Workforce Development mailed the May 19, 2022 (reference 02) decision to the claimant's last-known address of record. The decision stated the decision would become final unless an appeal was postmarked by May 29, 2022 or was received by the Appeals Section by that date. The decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. May 29, 2022 was a Sunday. May 30, 2022 was Memorial Day. The next working day was Tuesday, May 31, 2022. The claimant received the decision in a timely manner, prior to the deadline for appeal. On May 31, 2022, the claimant went to the Cedar Rapids IowaWORKS Center, completed two appeal forms, including one for the decision in question, and delivered the completed appeal forms to the IowaWORKS Center staff. The Center faxed the claimant's appeal packet to the Appeals Bureau on June 3, 2022. The Appeals Bureau received the appeal on June 3, 2022.

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 an timely appeal from the May 19, 2022 (reference 02) decision. The evidence establishes that the claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the appeal deadline, and delivered a completed appeal to the Cedar Rapids IowaWORKS staff on May 31, 2022, the extended appeal deadline date. The IWD staff delayed forwarding the appeal to the Appeals Bureau until June 3, 2022. Because IWD staff caused the appeal to be docketed late, there is good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was timely, the administrative law judge has jurisdiction to enter a ruling on the merits of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

PL 116-136, Section 2107(e) provides, in relevant part, as follows:

(e) Fraud and overpayments

...

(2) Repayment

In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(A) the payment of such pandemic emergency 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 pandemic emergency unemployment compensation payable to such individual under this section 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 pandemic emergency 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.

Because the reference 03 decision denied PEUC benefits for the period beginning February 14, 2021 and has been affirmed on appeal, the \$2,842.00 in PEUC benefits the claimant received for 14 weeks between February 21, 2021 and May 29, 2021 are an overpayment of benefits. The claimant must repay the overpaid PEUC benefits not recovered through an offset of PUA benefits unless the claimant applies for and is approved for waiver of repayment of PEUC benefits. See below.

DECISION:

The claimant's appeal from the May 19, 2022 (reference 02) decision was timely. The decision is AFFIRMED. Because the reference 03 decision denied PEUC benefits for the period beginning February 14, 2021 and has been affirmed on appeal, the \$2,842.00 in PEUC benefits the claimant received for 14 weeks between February 21, 2021 and May 29, 2021 are an overpayment of benefits. The claimant must repay the overpaid PEUC benefits not recovered through an offset of PUA benefits unless the claimant applies for and is approved for waiver of repayment of PEUC benefits. See below.



James E. Timberland
Administrative Law Judge

September 28, 2022
Decision Dated and Mailed

jet/kmj

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

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.