

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARIE E OTTO
Claimant

APPEAL NO. 22A-UI-07263-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/14/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 –Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Marie Otto (claimant/appellant) appealed the Iowa Workforce Development (“IWD”) decision dated August 27, 2021 (reference 03) that concluded the claimant was overpaid Federal Pandemic Unemployment Compensation in the amount of \$2,700.00 for the nine-week period ending May 22, 2021 as a result of a prior decision denying benefits.

A telephone hearing was held on April 18, 2022, pursuant to due notice. Claimant participated personally. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant overpaid Federal Pandemic Unemployment Compensation (FPUC)?

Is the appeal timely?

FINDINGS OF FACT:

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

The administrative record shows claimant received FPUC in the amount of \$2,700.00 from the benefit week ending March 20, 2021 and continuing through the benefit week ending May 22, 2021.

Claimant was subsequently determined to be disqualified from benefits during that period in a decision dated May 28, 2021. That decision was modified with no change in effect in an administrative law judge decision dated August 9, 2021. See 21A-UI-13437-AD-T. That decision remains in force.

The Unemployment Insurance Decision was mailed to claimant at the above address on August 27, 2021. That was claimant’s correct address at that time. Claimant is unsure if or when she

received the decision. Claimant lives in a small town and gets her mail at the local post office. She has had issues in the past with getting mail in a timely manner.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 9, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant initially filed an appeal on March 6, 2022 after receiving several other decisions dated February 24, 2022 relating to the claim year beginning March 15, 2020. An appeal on this matter was not processed at that time, presumably because the appeal appeared to be related to the prior claim year. Claimant filed another appeal on March 25, 2022, which again appeared to be related to decisions from the prior claim year. However, an appeal on this matter was set up at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated August 27, 2021 (reference 03) that concluded the claimant was overpaid Federal Pandemic Unemployment Compensation in the amount of \$2,700.00 for the nine-week period ending May 22, 2021 as a result of a prior decision denying benefits is AFFIRMED.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for

benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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 record in this case indicates that claimant never received the decision due to USPS error or delay. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant did file an appeal shortly after learning of several other adverse decisions. The administrative law judge therefore finds there exists good cause for the delay and concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 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.

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.

The American Rescue Plan Act extended FPUC effective December 27, 2020 in the amount of \$300.00 per week and continuing until Iowa ended its participation in the program effective June 12, 2021.

The administrative record shows claimant received FPUC in the amount of \$2,700.00 from the benefit week ending March 20, 2021 and continuing through the benefit week ending May 22, 2021.

Claimant was subsequently determined to be disqualified from benefits during that period in a decision dated May 28, 2021. That decision was modified with no change in effect in an administrative law judge decision dated August 9, 2021. See 21A-UI-13437-AD-T. That decision remains in force.

Because the claimant is disqualified from UI during the above period she is ineligible for FPUC during that period. Claimant has therefore been overpaid FPUC during that period in the amount of \$2,700.00.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated August 27, 2021 (reference 03) that concluded the claimant was overpaid Federal Pandemic Unemployment Compensation in the amount of \$2,700.00 for the nine-week period ending May 22, 2021 as a result of a prior decision denying benefits is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge

April 21, 2022
Decision Dated and Mailed

abd/abd

Note to Claimant:

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.

If this decision determines you have been overpaid federal pandemic-related benefits you may request a waiver of the overpayment. Instructions for requesting a waiver can be found 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.