

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**JAMES KUBERSKI**

Claimant

**APPEAL NO: 22A-UI-05924-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/22/20**

**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The claimant, James A Kuberski, filed an appeal from the February 2, 2021, (reference 02) unemployment insurance decision that concluded he was overpaid \$8,177.00 in unemployment insurance benefits. After proper notice, a telephone hearing was conducted on April 18, 2022. The hearing was held jointly with appeal 22A-UI-05923-SN-T and 22A-UI-05925-SN-T. The claimant participated. Official notice of the administrative records was taken. Exhibit D-1 and D-2 were received into the record.

**ISSUES:**

Whether the claimant's appeal is timely? Whether there are reasonable grounds to consider the appeal otherwise timely?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

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

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 22, 2020.

The claimant filed for and received a total of \$8,177.00 in regular, state unemployment insurance benefits for the weeks between March 22, 2020 and July 18, 2020.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 22A-UI-05923-SN-T.

The following section of the findings of facts describes the findings necessary for the overpayment issue:

A disqualification decision was mailed to the claimant's address of record on July 22, 2020. (Exhibit D-1) The claimant received the decision around the time it was mailed. The claimant had a conversation with a representative of the agency who assured him it would be "taken care of under the Cares Act" around the time the claimant received the decision.

On February 2, 2021, the claimant was sent an overpayment decision indicating he owed \$8,177.00 in regular unemployment insurance benefits. This decision gave a final date for appeal of February 12, 2021. (Exhibit D-1) On March 3, 2021, the claimant received an email from Adam Phipps, a representative of the agency. Mr. Phipps assured the claimant that the overpayment would be offset by Pandemic Unemployment Assistance (PUA) payments.

On March 3, 2022, Iowa Workforce Development Department sent an overpayment decision indicating he owed \$9,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits. The claimant filed his appeal on March 7, 2022. (Exhibit D-2)

### **REASONING AND CONCLUSIONS OF LAW:**

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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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. Board 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. 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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant does describe circumstances which would have tolled his appeal up to the point he received the original overpayment decision on February 2, 2021. Essentially, the claimant contends a representative of the agency told him that this period would be covered by "the Cares Act." While claimant contends the appeal period was further tolled by an email he received a month later, the administrative law judge does not find argument compelling. The administrative law judge notes that claimants should read the decision carefully as take seriously the deadline written at the bottom. The administrative law judge finds the overpayment decision the claimant received on February 2, 2021, should have given him doubts about the assurance he received over the phone. At the very least, the claimant could have called the agency on or about that day. The claimant did not take any action for weeks. The administrative law judge finds the claimant had a reasonable opportunity to appeal at that time but did not appeal. As a result, his appeal is untimely.

The administrative law judge concludes that failure 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 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature 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).

Assuming *arguendo* the claimant's appeal was timely, the claimant was overpaid regular unemployment benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

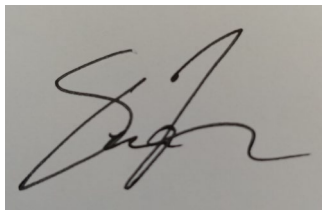
a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by 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.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$8,177.00 in unemployment insurance benefits.

The claimant contends that PUA should cover him for this period. The issue is that the claimant did receive PUA payments for this period as well. So, while the administrative law judge acknowledges the claimant is entitled to PUA payments, he notes that this decision regards unemployment insurance benefit payments he is disqualified from receiving. The administrative law judge notes that the claimant cannot be eligible for both payments during the same period.

**DECISION:**

The unemployment insurance decision dated February 2, 2021, (reference 02), is affirmed. The claimant was overpaid \$8,177.00 in regular, state unemployment insurance benefits.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
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April 21, 2022  
Decision Dated and Mailed

smn/scn