

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ALEJANDRA N BARRIOS MUNOZ**  
Claimant

**APPEAL NO. 21A-UI-14739-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/10/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.3(7) - Recovery of Benefit Overpayment  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

On June 8, 2021, Alejandra Barrios Munoz (claimant/appellant) appealed the May 28, 2021 (reference 02) decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$1,358.00 for four weeks, from the benefit week ending May 16, 2020 and continuing through the benefit week ending June 6, 2020.

A telephone hearing was set for August 21, 2021. However, claimant agreed to waive notice and hold the hearing instead on July 29, 2021, at 2 p.m. A hearing was held at that time. Claimant participated personally. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Was the claimant overpaid regular, state unemployment insurance benefits?

**FINDINGS OF FACT:**

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

The administrative record shows claimant received regular, state unemployment insurance benefits in the amount of \$1,358.00 from the benefit week ending May 16, 2020 through the benefit week ending June 6, 2020.

Claimant was subsequently determined to be ineligible for benefits during that period in a decision dated September 3, 2020. That decision was not appealed further and remains in force See 20A-UI-08467-AD-T.

The Unemployment Insurance Decision was mailed to claimant at the above address on May 28, 2021. The decision incorrectly listed the deadline to appeal as that same date. Claimant appealed the decision on June 8, 2021.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The May 28, 2021 (reference 02) decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$1,358.00 for four weeks, from the benefit week ending May 16, 2020 and continuing through the benefit week ending June 6, 2020, 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 administrative law judge finds the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after receiving the decision. This is a good cause reason for delay and the administrative law judge therefore 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.

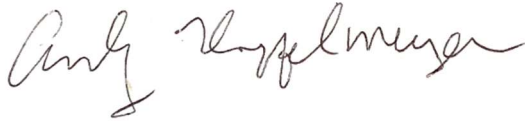
The administrative record shows claimant received regular, state unemployment insurance benefits in the amount of \$1,358.00 from the benefit week ending May 16, 2020 through the benefit week ending June 6, 2020.

Claimant was subsequently determined to be ineligible for benefits during that period in a decision dated September 3, 2020. That decision was not appealed further and remains in force See 20A-UI-08467-AD-T.

Because claimant received regular, state unemployment insurance benefits in the amount of \$1,358.00 for which she was later determined to be ineligible, she has been overpaid in that amount.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The May 28, 2021 (reference 02) decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$1,358.00 for four weeks, from the benefit week ending May 16, 2020 and continuing through the benefit week ending June 6, 2020, is **AFFIRMED**.



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

August 3, 2021

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Decision Dated and Mailed

abd/kmj

**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 FPUC and/or PEUC, 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.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.