

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARA M BAACK
Claimant

APPEAL 22A-UI-10578-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

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

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

STATEMENT OF THE CASE:

On April 26, 2022, Kara Baack (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated August 11, 2021 (reference 05) that determined claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$3,000.00 for ten weeks between April 4 and June 12, 2021 based on a prior decision finding claimant ineligible for PEUC.

A telephone hearing was held on June 13, 2022. The parties were properly notified of the hearing. Claimant participated personally. Appeal Nos. 22A-UI-10569, 22A-UI-10575, 22A-UI-10576, 22A-UI-10577, and 22A-UI-10578 are related and were heard together, forming a single hearing record. Employer Sally Beauty Supply was noticed on 22A-UI-10575 but did not appear or participate.

No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the claimant overpaid Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

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

The administrative record shows claimant received FPUC in the amount of \$300.00 per week for the ten weeks between April 4 and June 12, 2021. The total amount of FPUC paid during this period was \$3,000.00. Claimant was subsequently found to be ineligible for PEUC during that period in a decision dated August 10, 2021. That decision has now been affirmed. See 22A-UI-10576.

Claimant received the August 11, 2021 decision finding she was overpaid FPUC. She did not appeal the decision because she was advised by an IWD representative not to. The administrative record shows claimant filed a request for waiver of the overpayment on January 29, 2022. It does not appear that IWD has yet issued a determination on that request.

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 11, 2021 (reference 05) that determined claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$3,000.00 for ten weeks between April 4 and June 12, 2021 based on a prior decision finding claimant ineligible for PEUC 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 delay in appealing was due to IWD error or misinformation. 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.

PL 116-136, 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 \$300.00 per week for the ten weeks between April 4 and June 12, 2021. The total amount of FPUC paid during this period was \$3,000.00. Claimant was subsequently found to be ineligible for PEUC during that

period in a decision dated August 10, 2021. That decision has now been affirmed. See 22A-UI-10576.

The FPUC payments were based on claimant's eligibility for PEUC during the period in question. Because claimant was later found to be ineligible for PEUC during the period in question she was also ineligible for FPUC during that period. She has therefore been overpaid FPUC in the amount of \$3,000.00.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated August 11, 2021 (reference 05) that determined claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$3,000.00 for ten weeks between April 4 and June 12, 2021 based on a prior decision finding claimant ineligible for PEUC is AFFIRMED.

REMAND:

The administrative record shows claimant filed a request for waiver of the overpayment on January 29, 2022. It does not appear that IWD has yet issued a determination on that request. This matter is REMANDED for issuance of a determination on claimant's request for waiver of the overpayment.



Andrew B. Duffelmeyer
Administrative Law Judge

June 23, 2022
Decision Dated and Mailed

abd/abd