

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PRISCILLA PANG
Claimant

APPEAL 22A-UI-00885-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/15/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On November 16, 2021, Priscilla Pang (claimant/appellant) appealed the decision dated November 3, 2021 (reference 02) that concluded the claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$3,000.00 for the three-week period ending July 11, 2020, due to duplicate payments being issued in error. A telephone hearing was held on February 2, 2022, and was consolidated with the hearing for appeal number 22A-UI-00884-AR-T. Claimant participated personally. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Was the claimant overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was granted FPUC benefits as a supplement to her eligibility for PUA benefits.

On July 13, 2020, Iowa Workforce Development (IWD) issued claimant a payment in the gross amount of \$1,200.00 for the two-week period ending July 4, 2020. On July 14, 2020, IWD issued claimant a payment in the gross amount of \$1,800.00 for the three-week period ending July 11, 2020. On July 15, 2020, IWD issued claimant a payment in the gross amount of \$1,800.00 for the three-week period ending July 11, 2020.

Based on the above, claimant has received FPUC benefits in the gross amount of \$4,800.00 for the three-week period ending July 11, 2020, due to duplicate payments. She was entitled to received \$1,800.00 for that three-week period.

An overpayment decision letter was mailed to claimant's last known address of record on November 3, 2021. The letter indicated that an appeal was due by November 13, 2021, and

provided instructions for how to submit an appeal. Claimant received the letter on approximately November 12, 2021. She was upset because of the overpayment and did not know how to proceed. It was after she received another overpayment letter that was delivered in an untimely fashion that she called IWD for assistance and help. At that time, the representative informed claimant of her right to appeal the decision. She submitted her appeal on November 16, 2021.

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, 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) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Here, the claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

Even if the evidence supported a finding that the appeal was timely filed, the administrative law judge would affirm the overpayment of FPUC benefits.

Public Law 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...

Section 203 of the Continued Assistance for Unemployed Workers Act of 2020 provides in pertinent part:

(a) IN GENERAL. – Section 2104(e) of the CARES Act (15 U.S.C. 9023(e)) is amended to read as follows: . . .

“(e) APPLICABILITY. – An agreement entered into under this section shall apply

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(1) to weeks of unemployment beginning after the date on which such agreement is entered into and ending on or before July 31, 2020; and

(2) to weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021.”.

(b) AMOUNT.-

(1) IN GENERAL. – Section 2104(b) of the CARES Act (15 U.S.C. 9023(b)) is amended –

(A) in paragraph (1)(B), by striking “of \$600” and inserting “equal to the amount specified in paragraph (3)”;

(B) by adding at the end of the following new paragraph:

“(3) AMOUNT OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.-

“(A) IN GENERAL. – The amount specified in this paragraph is the following amount:

“(i) For weeks of unemployment beginning after the date on which an agreement is entered into under this section and ending on or before July 31, 2020, \$600.

“(ii) For weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021, \$300.”.

As described in the Findings of Fact above, claimant received duplicate payments for the benefit weeks ending July 11, 2020. The payment was made inadvertently. Accordingly, claimant has received FPUC benefits to which she was not entitled. The administrative law judge concludes that claimant has been overpaid FPUC benefits in the gross amount of \$3,000.00 for the three-week period ending July 11, 2020. Claimant is obligated to repay the FPUC benefits unless repayment of this obligation is waived. Instructions on how to apply for a waiver are found below.

DECISION:

The November 3, 2021 (reference 01) unemployment insurance decision is affirmed. The appeal in this case is untimely, and the decision of the representative remains in effect. In the alternative, claimant is overpaid FPUC benefits in the amount of \$3,000.00.



Alexis D. Rowe
Administrative Law Judge

February 22nd, 2022
Decision Dated and Mailed

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NOTE TO CLAIMANT:

- This decision determines you have been overpaid FPUC benefits. 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.
- You may also request a waiver of this overpayment. The written request must include the following information:
 1. Claimant name & address.
 2. Decision number/date of decision.
 3. Dollar amount of overpayment requested for waiver.
 4. Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319

- This Information can also be found on the Iowa Workforce Development website 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.