

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

THEODORE FALCON JR
Claimant

PRIMOS MEXICAN RESTAURANT INC
Employer

APPEAL 22A-UI-11769-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Theodore Falcon Jr, the claimant/appellant, filed an appeal from the October 12, 2021, (reference 05) unemployment insurance (UI) decision that denied REGULAR (state) UI benefits as of April 26, 2020 because Iowa Workforce Development (IWD) records indicated that he had not been available for work because he had not made child care arrangement. The parties were properly notified about the hearing. A telephone hearing was held on June 21, 2022. Mr. Falcon Jr participated personally. The employer participated through Travis Taylor, owner. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Mr. Falcon Jr's appeal filed on time?
Is Mr. Falcon Jr able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Falcon Jr at the correct address on October 12, 2021. The UI decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by October 22, 2021. Mr. Falcon Jr received the decision in the mail. Mr. Falcon Jr did not appeal the UI decision at that time.

On January 7, 2021, Mr. Falcon Jr had applied for Pandemic Unemployment Assistance (PUA) benefits, which were federal COVID-19 UI benefits for people who were not eligible for REGULAR (state) UI benefits but who unemployed, partially unemployed, or unable to work due to the COVID-19 pandemic. In his PUA application Mr. Falcon Jr stated that he had last worked on March 12, 2020, and that he could not work because his child's school was closed due to the COVID-19 pandemic. On January 23, 2021, IWD approved Mr. Falcon Jr for PUA benefits starting on December 13, 2020. The department did not explain to Mr. Falcon Jr why his PUA eligibility started on December 13, 2020.

IWD issued another decision on April 26, 2022 finding Mr. Falcon Jr was overpaid over \$16,000.00 in REGULAR (state) UI benefits, Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC) and Lost Wage Assistance Payments (LWAP) benefits between April 26, 2020 and December 12, 2020. Mr. Falcon Jr received that decision in the mail. Mr. Falcon Jr filed an appeal online on May 6, 2022. The IWD Appeals Bureau received the appeal on May 6, 2022. IWD set up appeals for the overpayment decision and the October 12, 2021, (reference 05) UI decision that had denied REGULAR (state) UI benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Falcon Jr's appeal of the October 12, 2021, (reference 05) UI decision was not filed on time.

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) provides:

2. 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:
 - (2) 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. 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).

Mr. Falcon Jr received the UI decision before the deadline and, therefore, could have filed an appeal by the appeal deadline. The notice provision of the decision was valid. Mr. Falcon Jr's delay in filing his appeal 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 in filing his appeal. Mr. Falcon Jr's appeal of the October 12, 2021, (reference 05) UI decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Mr. Falcon Jr's appeal of the October 12, 2021, (reference 05) UI decision was not filed on time. The October 12, 2021, (reference 05) UI decision is AFFIRMED.

REMAND:

This matter is REMANDED (sent back) to the Benefits Bureau of Iowa Workforce Development for the Bureau to review Mr. Falcon Jr's January 7, 2021 PUA application, and issue a decision on whether his PUA claim should be backdated.

If IWD finds that Mr. Falcon Jr's claim should be backdated, this matter is REMANDED to the Benefits Bureau of Iowa Workforce Development to recover the overpayment of REGULAR (state) UI benefits and/or PEUC benefits from the PUA (federal) benefits Mr. Falcon Jr is owed to the greatest extent possible.

If IWD finds Mr. Falcon Jr eligible for PUA benefits for any weeks that IWD has found him ineligible for REGULAR (state) UI benefits, he will also be eligible for FPUC and/or LWAP benefits for those weeks.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 26, 2022
Decision Dated and Mailed

dz/kmj

NOTE TO MR. FALCON JR:

- The administrative law judge remanded (sent back) your case to IWD for the department to decide if your PUA claim should be backdated to before December 13, 2020 (the date IWD found you eligible for PUA benefits).
- You may also file an appeal from the January 23, 2021 decision that found you eligible for PUA benefits starting on December 13, 2020 and ask for a new start date that is earlier than December 13, 2020..
- You may file that appeal by choosing one of these options:
 - Online: www.iowaworkforcedevelopment.gov/ui-appeal
 - Mail:

Iowa Workforce Development
Appeals Bureau
1000 E Grand Ave
Des Moines, IA 50319
 - Fax: 515-478-3528
- If IWD backdates your PUA claim, you can use the federal PUA benefits to pay off the REGULAR (state) UI overpayment and PEUC overpayment.

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.