

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRAD FAIR
Claimant

APPEAL 21A-UI-24058-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/14/20
Claimant: Appellant (6)

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

STATEMENT OF THE CASE:

On October 28, 2021, claimant/appellant, Brad Fair, filed an appeal from the June 25, 2021, (reference 07) unemployment insurance decision that found claimant was overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for a 6-week period starting 06/14/2020 and ending 07/25/2020. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 27, 2021 at 8:05 AM and the hearings were consolidated. The claimant participated. The Department did not participate. Judicial notice was taken of the administrative file.

ISSUE:

Is claimant's appeal timely?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant's appeal is dated October 28, 2021 and to be timely, needed to be filed on or before July 6, 2021. The decision was mailed to claimant's last known addresses, which is the same address he currently uses, as claimant resided with his father moved back in with his father, after living in Arkansas. Claimant moved to Arkansas in the spring of 2021 and did not return to the current address until sometime in October 2021. The decision timely arrived at claimant's last known address. Claimant found the decision in the stack of mail that had piled up while he was in Arkansas, and then took a couple of weeks looking into matters, before submitting his appeal.

Claimant appealed the underlying decision denying regular unemployment benefits, with a reference number of 01, in 20A-UI-10519-BH-T, that kept the underlying decision in effect and dismissed the appeal due to claimant not responding to the hearing notice and providing a telephone number, which he could be reached for the hearing, scheduled on October 13, 2020. That decision was not appealed and remains in effect.

Claimant received \$3,600.00 in FPUC benefits for a 6-week period starting 06/14/2020 and ending 07/25/2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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:

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.

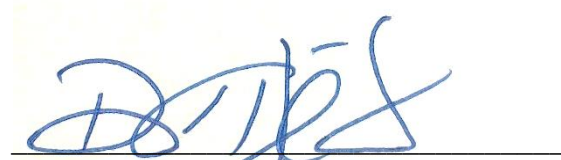
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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).

Appellant'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. The decision was timely received at claimant's

last known address. The appeal was not timely submitted. Claimant had moved to Arkansas and did not update his mailing address. He continued receiving mail at the address he used to live at with his father. That mail piled up from spring 2021 to October 2021, when claimant moved back into the Fort Dodge home with his father to find the decision. No good cause reason has been established for the delay. The administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The June 25, 2021, (reference 07) unemployment insurance decision that found claimant was overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits remains in effect as the appeal in this case was not timely, and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

January 24, 2022
Decision Dated and Mailed

dh/mh

Note to Claimant:

This decision determines you have been overpaid FPUC under the CARES Act. 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. Additionally, instructions for requesting a **waiver** of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>