

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

BRAYAN MENDOZA OROZCO
Claimant

APPEAL 22A-UI-07934-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENSEN CONSTRUCTION CO.
Employer

**OC: 11/22/20
Claimant: Appellant (4)**

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Code § 96.5(5) – Other Compensation
PL 116-136, Sec 2107 – Pandemic Emergency Unemployment Compensation

STATEMENT OF THE CASE:

Brayan Mendoza Orozco, the claimant/appellant, filed an appeal from the March 15, 2022 (reference 02) unemployment insurance (UI) decision that concluded he was overpaid Pandemic Emergency Unemployment Compensation (PEUC) benefits in the gross amount of \$2,455.00 because he did not report and/or incorrectly reported wages earned with the employer, Jensen Construction Co. The parties were properly notified of the hearing. A telephone hearing was held on May 27, 2022. Mr. Mendoza Orozco participated personally through a CTS Language Link Spanish interpreter. Ignacio Medina, Mr. Mendoza Orozco's stepfather, observed the hearing. The employer participated through Mark Anthony, general superintendent. The administrative law judge took official notice of the administrative record. Claimant's Exhibit A and Department's Exhibit 1 were admitted as evidence.

ISSUES:

Is Mr. Mendoza Orozco's appeal filed on time?
Has Mr. Mendoza Orozco been overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Mendoza Orozco at the correct address on March 15, 2022. The UI decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by March 25, 2022.

IWD mailed another decision to Mr. Mendoza Orozco on the same day. The March 15, 2022, (reference 03) UI decision concluded that Mr. Mendoza Orozco was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$1,500.00 because he did not report and/or incorrectly reported wages earned with the employer, Jensen Construction Co. Mr. Mendoza Orozco received the decisions in the mail on, or about, March 30, 2022. Mr.

Mendoza Orozco did not understand what the decisions meant so he talked with the employer. Mr. Mendoza Orozco filed an appeal online on April 1, 2022. IWD Appeals Bureau received the appeal on April 1, 2022. IWD set up appeals for the March 15, 2022 (reference 02) UI decision, and the March 15, 2022 (reference 03) UI decision.

The administrative law judge further finds: Mr. Mendoza Orozco began working for the employer in 2019. He works as a full-time, seasonal laborer. The employer pays him \$30.88 per hour. Mr. Mendoza's weekly UI benefit amount is \$491.00.

In relevant part, Mr. Mendoza Orozco filed weekly claims for 7 weeks between April 25, 2021 and June 12, 2021. Mr. Mendoza Orozco reported earning weekly wages of \$0.00 for each of those seven weeks. Based on the wages he reported, IWD paid Mr. Mendoza Orozco REGULAR (state) UI benefits in the gross amount of \$491.00 for each of those seven weeks.

IWD conducted an audit of Mr. Orozco Mendoza's wages and asked the employer to report his weekly gross wages to IWD. The employer, through its payroll supervisor Lisa Salmon, reported that the employer paid Mr. Mendoza Orozco wages in the gross amount of \$1,931.33 for the week of April 25 through May 1, \$1,678.01 for the week of May 2-8, \$0.00 for the week of May 9-15, \$0.00 for the week of May 16-22, \$1,235.20 for the week of May 23-29, \$1,235.20 for the week of May 30 through June 5, and \$1,235.20 for the week of June 6-12. Department's Exhibit 1.

The employer actually paid Mr. Mendoza Orozco's \$0.00 for the week of April 25 through May 1, \$0.00 for the week of May 2-8, \$216.16 for the week of May 9-15 (for 7 hours of vacation pay), \$0.00 for the week of May 16-22, \$0.00 for the week of May 23-29, \$247.04 for the week of May 30 through June 5 (for 8 hours of vacation pay), and \$0.00 for the week of June 6-12. Claimant's Exhibit A. The employer paid Mr. Mendoza Orozco vacation pay so he could maintain his benefits. Mr. Mendoza Orozco did not know that the employer would be paying him vacation pay for those two weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Mendoza Orozco's appeal of the March 15, 2022, (reference 02) UI decision was 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. Mendoza Orozco did not receive the March 15, 2022, (reference 02) UI decision before the deadline and, therefore, could not have filed an appeal by the appeal deadline. The notice provision of the decision was invalid. Mr. Mendoza Orozco filed an appeal within ten days of when he received the decision. Mr. Mendoza Orozco's appeal was filed on time.

The administrative law judge further concludes as follows:

Iowa Code section 96.5(5) provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment.

However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Code section 96.3(7) provides, in relevant 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.

Iowa Code § 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

PL 116-136 Sec 2107 provides, in relevant part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(2) PROVISIONS OF AGREEMENT. —

Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

Mr. Mendoza Orozco incorrectly reported his wages for the week of May 9-15, and the week of May 30 through June 5. Since Mr. Mendoza Orozco did not know the employer would be paying him vacation pay for those two weeks, he reported that he earned \$0.00 for those two weeks. The employer, on the other hand, provided inaccurate wage information to IWD for all seven weeks between April 25 and June 12. Fortunately for Mr. Mendoza Orozco, he filed an appeal and provided the correct information.

Based on his correct wages, Mr. Mendoza Orozco was partially unemployed the week of May 9-15, and the week of May 30 through June 5. Those two weeks, Mendoza Orozco earned less than this weekly UI benefit amount (\$491.00) plus \$15.00, or less than \$506.00. Based on his correct wages, Mr. Mendoza Orozco was entitled to PEUC benefits in the gross amount of \$491.00 for the weeks of April 25 through May 1, May 2-8, May 16-22, and May 23-29. For the week of May 9-15, Mr. Mendoza Orozco was entitled to PEUC benefits in the gross amount of \$396.00. For the week of May 30 through June 5, Mr. Mendoza Orozco was entitled to PEUC benefits in the gross amount of \$365.00.

Since Mr. Mendoza Orozco incorrectly reported his wages for week of May 9-15, and he received PEUC benefits in the total gross amount of \$491.00 for that week, but he was entitled to \$396.00 in benefits for that week, he has been overpaid PEUC benefits in the gross amount

of \$95.00 (\$491.00 - \$396.00). Since Mr. Mendoza Orozco incorrectly reported his wages for week of May 30 through June 5, and he received PEUC benefits in the total gross amount of \$491.00 for that week, but he was entitled to \$365.00 in benefits for that week, he has been overpaid PEUC benefits in the gross amount of \$126.00 (\$491.00 - \$365.00). Mr. Mendoza Orozco has been overpaid PEUC benefits in the total amount of \$221.00 (\$95.00 + \$126.00).

DECISION:

Mr. Mendoza Orozco's appeal of the March 15, 2022, (reference 02) UI decision was filed on time. The March 15, 2022, (reference 02) UI decision is MODIFIED IN FAVOR OF THE APPELLANT, Mr. Mendoza Orozco. Mr. Mendoza Orozco has been overpaid PEUC benefits in the gross amount of \$221.00, which must be repaid.



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

July 28, 2022
Decision Dated and Mailed

dz/mh

NOTE TO MR. MENDOZA OROZCO:

- If you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** To apply for PUA benefits,
 - First go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>
 - Go to the "WHAT TO EXPECT FROM THE HEARING" section.
 - Go to the last two sentences in that section.
 - The PUA application link is at the end of the second-to-last sentence of the section.
 - The reference number/authorization number is the pin number you used for the appeal hearing: 107934.
- **If IWD finds you eligible for federal PUA benefits, you can use the PUA benefits to pay off the REGULAR (state) UI overpayment.**
- **If you do not apply for and are not approved for PUA, you are required to repay the benefits you've received so far.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **But you can still apply for PUA benefits at the link above if you were unemployed for reasons related to COVID-19 between February 2, 2020, and June 12, 2021.**
- To check on your PUA application contact IWD online, via email, or by phone.
 - Online: Go to www.iowaworkforce.gov, click on "Contact Us" then click on "Unemployment Help Request" and complete the form.
 - Email: uiclaimshelp@iwd.iowa.gov
 - Phone: 1-866-239-0843

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> OR by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.