

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

BRAYAN MENDOZA OROZCO
Claimant

APPEAL 22A-UI-07936-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/22/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Brayan Mendoza Orozco, the claimant/appellant, filed an appeal from the March 15, 2022, (reference 03) unemployment insurance (UI) decision that concluded he was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$1,500.00 because he did not report and/or incorrectly reported wages earned with employer Jensen Construction Co. The parties were properly notified about the hearing. A telephone hearing was held on May 27, 2022. Mr. Mendoza Orozco participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

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 02) UI decision concluded that Mr. Mendoza Orozco 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. 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 03) UI decision, and the March 15, 2022 (reference 02) UI decision.

The administrative law judge further finds: Mr. Mendoza Orozco filed an initial claim for REGULAR (state) UI benefits effective March 15, 2020. Mr. Mendoza Orozco filed weekly claims and IWD paid him REGULAR (state) UI benefits and Pandemic Emergency Unemployment Compensation (PEUC) benefits on his claim. In relevant part, IWD also paid Mr. Mendoza Orozco FPUC benefits in the gross amount of \$1,500.00 for 5 weeks between April 25, 2021 and June 12, 2021 (the weeks of April 25 through May 1, May 2-8, May 23-29, May 30 through June 5, and June 6-12).

FPUC was a program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 that provided additional payment to those individuals that are receiving state or federal unemployment insurance payments. It is funded by the federal government, not by state unemployment taxes paid by employers. The Continued Assistance for Unemployed Workers Act of 2020 (enacted December 27, 2020) and American Rescue Act of 2021 (enacted March 11, 2021) extended FPUC benefits for weeks of unemployment to September 6, 2021. The FPUC amount was \$600.00 per week from April 5, 2020 through July 31, 2020. The FPUC amount was \$300.00 per week from December 27, 2020 through September 5, 2021. Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the FPUC program, effective June 12, 2021.

IWD conducted an audit of Mr. Mendoza Orozco's wages and asked the employer to report his weekly gross wages to IWD. The employer provided IWD with inaccurate information about Mr. Mendoza Orozco's weekly gross wages. See the administrative law judge's decision in Appeal 22A-UI-07934-DZ-T.

Almost one year and four months after he filed his initial claim effective November 22, 2020, and after he had already received REGULAR (state) UI benefits, PEUC benefits and FPUC benefits, IWD issued a March 15, 2022, (reference 02) decision finding Mr. Mendoza Orozco was overpaid PEUC benefits because he incorrectly reported wages earned with employer Jensen Construction Co. Mr. Mendoza Orozco appealed the decision to the Iowa Workforce Development Appeals Bureau. The administrative law judge's decision in Appeal 22A-UI-07934-DZ-T modified the the reference 02 UI decision in Mr. Mendoza Orozco's favor. The administrative law judge found that Mr. Mendoza Orozco was overpaid PEUC benefits for only two weeks, the week of May 9-15, 2021 and the week of May 30, 2021 through June 5, 2021 because he incorrectly reported his wages for those two weeks. The administrative law judge also found that Mr. Mendoza Orozco was entitled to some PEUC benefits for all seven weeks between April 25, 2021 and June 12, 2021.

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 03) 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 03) 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 Mr. Mendoza Orozco has not been overpaid FPUC benefits.

Iowa Code §96.3(7) provides, in pertinent 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.

PL116-136, 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...

Since Mr. Mendoza Orozco is eligible for some PEUC benefits for all seven weeks between April 25, 2021 and June 12, 2021, he is also eligible for FPUC benefits for all seven weeks. Mr. Mendoza Orozco has not been overpaid FPUC benefits.

DECISION:

Mr. Mendoza Orozco's appeal of the March 15, 2022, (reference 03) UI decision was filed on time. The March 15, 2022, (reference 03) decision is REVERSED. Mr. Mendoza Orozco has not been overpaid FPUC benefits.



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

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.