

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE ELLIOTT
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL NO: 21A-UI-19175-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1R)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On August 26, 2021, the claimant filed an appeal from the August 9, 2021, (reference 05) unemployment insurance decision that concluded he was overpaid \$8,400.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits. A telephone hearing was scheduled to be held on October 21, 2021 however, the claimant's attorney requested a postponement. The parties were properly notified of the hearing. The telephone hearing was held December 14, 2021. The hearing was held together with Appeals 21A-UI-19174-CS-T. The claimant participated through attorney Aaron M. Curry. Claimant testified during the hearing. Official notice of the administrative records was taken. Exhibits 1-50 were admitted into the record.

ISSUES:

Was claimant's appeal timely?

Is the claimant overpaid Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A overpayment unemployment insurance decision was mailed to the claimant's last known address of record on August 9, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 20, 2021. The claimant was on vacation and he did not receive the decision until August 23, 2021. Claimant filed an appeal on August 26, 2021.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 29, 2020.

The claimant received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$8,400.00 in federal benefits for the period of March 29, 2020 through July 11, 2020.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 21A-UI-12483-SC-T.

The claimant qualified for Pandemic Unemployment Assistance (PUA) effective March 29, 2020. (Exhibit 14). The record is unclear whether claimant received payment under the PUA program for the time period of March 29, 2020, through July 11, 2020. The record is unclear whether claimant was paid FPUC benefits as a result of his PUA eligibility for the time period of March 29, 2020, through July 11, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl.*

Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). The postage meter mark on the last day for filing does not perfect a timely appeal if the postmark affixed by the United States Postal Service is beyond the filing date. *Pepsi-Cola Bottling Company of Cedar Rapids v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The August 9, 2021, (reference 05) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND:

The issue of claimant receiving payment for FPUC benefits based upon his PUA eligibility for the time period of March 29, 2020, through July 25, 2020, is remanded to the Benefits Bureau for review to determine if payment should be issued to claimant.

Whether the claimant's overpayment of FPUC benefits should be partially recovered from his PUA benefits is remanded to the Benefits Bureau for review.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 14, 2022
Decision Dated and Mailed

cs/scn

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>