

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANICE TOLBERT
Claimant

APPEAL 20A-UI-02810-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 11/24/19
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, Available for, Work Search
Iowa Admin. Code r. 871-24.2(1)E – Eligibility – A&A – Failure to Report
Iowa Code § 96.3(7) – Payment – Overpayment
PL 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 17, 2020 (reference 10) unemployment insurance decision that denied benefits. Claimant was properly notified of the hearing. A telephone hearing was held on May 4, 2020, at 11:05 a.m. Claimant participated. No exhibits were admitted. Official notice was taken of the administrative record. Claimant waived notice of the issues of overpayment of regular unemployment insurance benefits and overpayment Federal Pandemic Unemployment Compensation. This matter is determined concurrently with Appeal 20A-UI-02811-AW-T.

ISSUES:

Whether claimant filed a timely appeal.
Whether claimant has been overpaid regular unemployment insurance benefits.
Whether claimant has been overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at her correct address on March 17, 2020. Claimant does not recall the date that she received the decision. Mail from Des Moines, Iowa is typically received in Cedar Rapids, Iowa in five days. Claimant has no reason to believe that was not the case with this decision. Claimant read the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 27, 2020. Claimant appealed the decision online on April 2, 2020. Claimant's appeal was received by Iowa Workforce Development on April 2, 2020. Claimant was out of town from March 26, 2020 to March 29, 2020. Claimant provided no other reason for submitting her appeal after the due date.

Despite being denied benefits at the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending appeal. The administrative record reflects that claimant filed for and has received regular unemployment insurance (UI) benefits in the gross amount of \$2,723.00 for the seven-week period between March 8, 2020 and April 25, 2020. In addition to regular unemployment insurance benefits, claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$2,400.00 for the four-week period between March 29, 2020 and April 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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)(c) 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:
 - (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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant had a reasonable opportunity to file a timely appeal.

The decision arrived in claimant's mail prior to the appeal due date. Any delay in submitting the appeal was not due to any agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

As claimant was receiving benefits pending appeal, the next issue to be determined is whether claimant has been overpaid benefits. For the reasons that follow, the administrative law judge concludes claimant was overpaid benefits, which must be repaid.

Iowa Code section 96.3.(7) states:

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.

Because the disqualifying decision has been affirmed, benefits were paid to which claimant was not entitled. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$2,723.00 for the seven-week period between March 8, 2020 and April 25, 2020. Claimant is required to repay those benefits.

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...

Because claimant is disqualified from receiving UI, she is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid FPUC in the gross amount of \$2,400.00 for the four-week period between March 29, 2020 and April 25, 2020. Claimant is required to repay those benefits.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The March 17, 2020 (reference 10) unemployment insurance decision is affirmed. Claimant was overpaid regular unemployment insurance benefits in the gross amount of \$2,723.00 for the seven-week period between March 8, 2020 and April 25, 2020, which must be repaid. Claimant has been overpaid Federal Pandemic Unemployment Compensation in the gross amount of \$2,400.00 for the four-week period between March 29, 2020 and April 25, 2020, which must be repaid. This overpayment decision is made concurrently with and should be considered duplicative of the overpayment decision in Appeal 20A-UI-02811-AW-T.



Adrienne C. Williamson
Administrative Law Judge
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May 11, 2020
Decision Dated and Mailed

acw/scn