

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**CHRISTOPHER S LEMON**  
Claimant

**VOLT MANAGEMENT CORP**  
Employer

**APPEAL 20A-UI-05944-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

---

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The claimant/appellant, Christopher S. Lemon, filed an appeal from the May 29, 2020 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 14, 2020. The claimant participated personally. The employer, Volt Management Corp., participated through Karen Williams, branch manager.

The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant established a claim for unemployment insurance benefits with an effective date of March 29, 2020. An initial decision, denying the claimant benefits on the basis of being on a leave of absence, was mailed to the claimant’s last known address on May 29, 2020. The claimant checks his mail approximately once a week but does not recall when he received the initial decision. The initial decision contained a warning that an appeal was due by June 8, 2020.

The initial decision also provided instructions on how to file an appeal, and offered the options to file it online, by US Mail, or by fax. The claimant does not own a computer. The claimant’s appeal was submitted by fax on June 12, 2020 (Department Exhibit D-1).

Mr. Lemon stated he did not file his own appeal because he does not have a computer. The appeal was not submitted by computer, but rather fax. He did not review the appeal that was submitted on his behalf. He stated he called Volt Management (his employer) or IWD Davenport and requested it be completed for him. He could not recall who he spoke to or when he made the request. He had no explanation for why the appeal was submitted after the deadline (Department Exhibit D-1).

Despite being denied benefits after the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their claims were pending due to the backlog caused by the recent COVID 19 outbreak. The claimant was one of the individuals whose funds were released pending the initial decision. The administrative record shows, the claimant filed for and received a total of \$1,456.00 in regular unemployment insurance benefits for the weeks between March 29, 2020 and May 23, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). He received \$4,800.00 in federal benefits for the eight-week period ending May 23, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United

States postal service, the division shall issue an appealable decision to the interested party.

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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 claimant presented no evidence that he was unable to file his own appeal. Even in the absence of a computer, the claimant could file his own appeal, as appeals may be submitted by US mail. (The administrative law judge would note that the appeal in this case was not submitted online but rather fax.) He stated that he asked someone to do it for him but could not recall the details of when or who filed the appeal. The claimant did not take reasonable steps to make sure the appeal was timely filed if he was receiving assistance, and IWD does not usually allow appeals to be filed by phone.

Based upon the evidence presented, the administrative law judge concludes that failure to follow the clear written instructions 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).

**Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.**

*As the claimant has received benefits to which he was not entitled, the next issue in this case is whether the claimant was overpaid unemployment insurance 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.

Since the decision disqualifying the claimant has been affirmed, he was overpaid \$1,456.00 in regular unemployment insurance 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...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies the claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits he received an additional \$4,800.00 in FPUC benefits for the eight-week period ending May 23, 2020. **The claimant may have to repay the benefits received thus far, unless the claimant applies and is approved for PUA, as directed in the paragraph below.**

**DECISION:**

The unemployment insurance decision dated May 29, 2020, (reference 03) is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

The claimant has been overpaid 1,456.00 in regular unemployment insurance benefits. The claimant has also been overpaid \$4,800.00 in Federal Pandemic Unemployment Compensation. The claimant may have to repay the benefits received thus far, unless the claimant applies and is approved for PUA, as directed below.

**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.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:  
[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)



---

Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

July 24, 2020  
Decision Dated and Mailed

jlb/scn