

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TYLER J BLY  
4147 BLUEBIRD DR  
DUBUQUE IA 52001-8807**

**SPAHN & ROSE LUMBER CO  
PO BOX 149  
DUBUQUE IA 52004**

**APPEAL 20A-UI-02351-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515)281-7191**

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:**

The name, address and social security number of the claimant.  
A reference to the decision from which the appeal is taken.  
That an appeal from such decision is being made and such appeal is signed.  
The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

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**ONLINE RESOURCES:**

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UIIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TYLER J BLY**  
Claimant

**SPAHN & ROSE LUMBER CO**  
Employer

**APPEAL 20A-UI-02351-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/29/19**  
**Claimant: Appellant (1R)**

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Iowa Code 96.4(3) – Able to and Available for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Iowa Admin. Code r. 871-24.10 – Leave of Absence  
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 21, 2020 (reference 01) unemployment insurance decision that found that the claimant was not eligible for unemployment insurance benefits based upon him being not able to work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on April 24, 2020. The claimant, Tyler J. Bly, participated personally. The employer, Spahn & Rose Lumber Co., participated through witness Erik Thoms. Claimant's Exhibit A was admitted. The claimant waived due notice of the potential issues of overpayment of unemployment insurance benefits and overpayment of Federal Pandemic Unemployment Compensation. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did the claimant file a timely appeal?  
Is the claimant overpaid benefits?  
Is the claimant overpaid Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

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

A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on January 21, 2020. The claimant received the decision in the mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 31, 2020. The claimant filed his appeal on March 17, 2020. He did not file an appeal in January of 2020 because he was still employed with the employer and did not want to endure repercussions from it if he filed an appeal.

Claimant was employed beginning August 22, 2016 until February 24, 2020. He injured his foot in a motorcycle accident on September 11, 2019. He was working with restrictions from October 9, 2019 until December 18, 2019. After December 18, 2019, he was on Family and Medical Leave Act ("FMLA") leave until his separation from employment. His injury has since fully healed and he is able to work.

Claimant's administrative records establish that he has received unemployment insurance benefits of \$4,781.00 from December 29, 2019 through April 18, 2020. Claimant's administrative records establish that he has received Federal Pandemic Unemployment Compensation benefits for the week-ending April 11, 2020 in the amount of \$600.00 and for the week-ending April 18, 2020 in the amount of \$600.00.

The issue of claimant's permanent separation from work and whether the claimant is currently able to work have yet to be adjudicated by the Benefits Bureau of Iowa Workforce Development. Those matters shall be remanded to the Benefits Bureau for an initial fact-finding interview, with notice and opportunity to be heard provided to both parties.

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

For the reasons that follow, the administrative law judge concludes that 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.

(emphasis added).

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).

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).

Claimant's 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). As such, 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 this 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).

Despite being denied benefits at in the original decision, Iowa Workforce Development made a decision 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 shows, claimant filed for and been paid a total of \$4,781.00 in unemployment insurance benefits for the weeks between December 29, 2019 and April 18, 2020. Claimant has also been paid Federal Pandemic Unemployment Compensation benefits of \$600.00 for the week-ending April 11, 2020 and \$600.00 for the week-ending April 18, 2020. Because the underlying decision that denied benefits to the claimant is affirmed, the issues of overpayment of benefits must be addressed.

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.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits of \$4,781.00 for the weeks between December 29, 2019 and April 18, 2020 pursuant to Iowa Code § 96.3(7) as the disqualification decision that created the overpayment decision is affirmed.

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 claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits claimant received, he also received an additional \$1,200.00 in FPUC benefits for the two-week period beginning April 5, 2020 and ending April 18, 2020. Claimant is required to repay those additional FPUC benefits.

The issues of claimant's ability to and availability for work can change on a week-by-week basis. Further, the issue of claimant's permanent separation from employment has yet to be investigated by the Benefits Bureau. As such, those two matters shall be remanded to the Benefits Bureau for an initial fact-finding interview and determination.

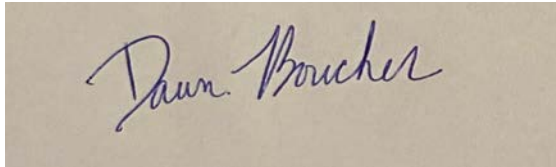
**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify 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:**

The January 21, 2020 (reference 01) decision is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect. The claimant is overpaid unemployment insurance benefits of \$4,781.00 for the weeks between December 29, 2019 and April 18, 2020 and is overpaid \$1,200.00 in FPUC benefits for the two-week period beginning April 5, 2020 and ending April 18, 2020. These benefits must be repaid.

**REMAND:**

The issues of a claimant's ability to and availability for work can change on a week-by-week basis. The issue of claimant's permanent separation from employment and whether the claimant has become able to and available for work is remanded to the Benefits Bureau for an initial fact-finding interview and determination.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

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Dawn Boucher  
Administrative Law Judge

April 27, 2020  
Decision Dated and Mailed

db/scn