

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KPABOU WADJA
Claimant

APPEAL 21A-UI-24288-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/24/19
Claimant: Appellant (6)**

PL 116-136, Sec. 2104 - Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

November 2, 2021, claimant, Kpabou Wadja, filed an appeal from the August 25, 2021, (reference 04) unemployment insurance decision that found claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$3,600.00 for a 6-week period between 05/24/2020 and ending 07/04/20. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 29, 2021 at 8:10AM. The hearings were consolidated. Claimant participated. The department did not participate. Judicial notice was taken of the administrative file.

ISSUE:

Is the Appeal Timely?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant's appeal is dated November 2, 2021 and to be timely, needed to be filed on or before September 4, 2021. The decision was mailed to claimant's last known addresses, which is the same address he currently uses. Claimant timely received the decision, but did not appeal right away. Claimant wanted to look into the matter. By the time claimant got around to filing the appeal, it was 61 days after the deadline.

Claimant appealed the underlying decision denying regular unemployment benefits, with a reference number of 02, in 21A-UI-24285-BH-T. That decision is one of the consolidated hearings, and it kept the underlying decision in effect and dismissed the appeal due to claimant's appeal being untimely.

Claimant received \$3,600.00 in FPUC benefits for a 6-week period between 05/24/2020 and ending 07/04/20.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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:

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:

(a) 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).

Appellant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. The decision was timely received at claimant's last known address. The appeal was not timely submitted. A good cause reason for the delay

has not been established. The administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The August 25, 2021, (reference 04) unemployment insurance decision finding claimant was overpaid \$3,600.00 in FPUC benefits which must be repaid remains in effect, as the appellant is in default and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

January 26, 2022
Decision Dated and Mailed

dh/mh