

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TERESA CROUSE**

Claimant

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**APPEAL NO. 23R-UI-07482-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/04/21**

**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal

PL 116-136, § 2104(f) – Federal Pandemic Unemployment Compensation Overpayment Waiver

**STATEMENT OF THE CASE:**

This matter is before the administrative law judge pursuant to an Employment Appeal Board remand in Hearing Number 23B-UI-05876.

On June 7, 2023, Teresa Crouse (claimant) filed a late appeal from the May 4, 2023 (reference 04) decision that denied her request to waive repayment of \$3,000.00 in overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits. After due notice was issued, a hearing was held on August 18, 2023. Claimant participated. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following state agency administrative records: DBRO, KPYX, NMRO, the reference 01, 02, 03, and 04 decisions, the administrative law judge decisions in Appeal Numbers 21A-UI-016389-B2-T, 22A-UI-10273-ED-T, and 22A-UI-10274-ED-T, the Employment Appeal Board decisions in Hearing Numbers 21B-UI-16389, 22B-UI-10273 and 22B-UI-10274, and the February 9, 2023 overpayment waiver application.

Pursuant to the claimant's request, the administrative law judge left the hearing record open through August 23, 2023 to allow the claimant opportunity to submit accurate and complete banking records for April 1, 2021 through July 31, 2021, a 2022 federal income tax return minus attachments, and a 2022 W2 tax form. The claimant did not submit the materials. Instead, on August 23, 2023, the claimant submitted an email wherein the claimant indicated she had reviewed her bank records and acknowledged receipt of the benefits in question. The claimant's email correspondence is received into the record as Exhibit C.

**ISSUES:**

Whether the appeal from the May 4, 2023 (reference 04) FPUC waiver denial decision was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

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

On May 4, 2023, Iowa Workforce Development mailed the reference 04 (o.c. 04/04/21) waiver denial decision to the claimant's Cordova, Alabama last-known address of record. The

reference 04 decision denied the claimant's request to waive repayment of \$3,000.00 in overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits. The reference 04 decision stated the decision would become final unless an appeal was postmarked by May 12, 2023 or was received by the Appeals Section by that date. The decision included clear and concise instructions for filing an appeal online, by fax, or by mail. The decision included a mailing address to which the appeal could be directed and an email address to which the claimant could direct email correspondence. The claimant received the reference 04 decision in a timely manner, prior to the deadline for appeal.

On May 9, 2023, the claimant mailed an appeal to the Appeals Bureau, but directed the appeal to an erroneous mailing address. The appeal envelope is postmarked May 9, 2023. The claimant addressed the appeal to 100 E. Grand Avenue in Des Moines. The correct appeal mailing address set forth on the reference 04 decision was 1000 E. Grand Avenue in Des Moines.

On May 18, 2023, the United States Postal Service returned the erroneously addressed appeal correspondence to the claimant after affixing a yellow sticker to the correspondence. The yellow sticker states

NIXIE 50318 05/18/2023  
RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD  
SORT IN MANUAL ONLY NO AUTOMATION

On June 7, 2023, the claimant sent an email message to the Appeals Bureau. The claimant wrote: "I put this letter in the mail on 5/9/23 and I received this returned to me yesterday. Please review my request as I thought I submitted it timely. Also my claim year is not correct on the form. It should be 2020." The claimant attached to her email message a photo of a brief appeal letter and a photo of the front exterior of the original appeal envelope. See Exhibit A. When reviewing the envelope, one can readily see through the yellow USPS sticker that the claimant had addressed the correspondence to building number 100, rather than 1000.

On June 8, 2023, and Appeals Bureau administrative assistant responded via email to the claimant's June 7, 2023 email as follows:

The issue of whether or not the appeal is timely has been added to the hearing. Would you check to see if the returned mail yellow sticker could easily be removed? If so, please email a photo when you reply to this email. The address on the envelope could possibly be helpful when the administrative law judge determines if the appeal is timely.

On June 15, 2023, the claimant sent an email response that included the earlier messages in the email correspondence chain and a photo of the exterior of the front of the appeal envelope. However, the claimant had newly forged the address information on the appeal envelope by adding a third zero to the building number in an attempt to make it appear as if the mailed correspondence had been directed to 1000 E. Grand Avenue, rather than an erroneous 100 E. Grand Avenue. The claimant concedes that she added the third zero after she removed the yellow USPS returned mail sticker and saw the mailing address she had originally placed on the appeal envelope was incorrect.

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

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes a June 7, 2023 untimely appeal from the May 2, 2023 (reference 04) waiver denial decision. The claimant received the reference 04 decision in a timely manner and had a reasonable opportunity to file an appeal by the May 12, 2023 appeal deadline. The claimant elected to mail the appeal, though other more expedient appeal options were available. Though the claimant mailed an appeal on May 9, 2023, and though the appeal envelope is postmarked May 9, 2023, the claimant directed the appeal to an erroneous address not associated with the Appeals Bureau, with Iowa Department of Inspections, Appeals & Licensing, or with Iowa Workforce Development. The law that deems a mailed appeal filed as of the postmark date presumes the correspondence is directed to the right address, something that did not happen here. The claimant's mailing error is akin to an appellant faxing an appeal to an erroneous fax number, emailing an appeal to an erroneous email address, or filing an online appeal through an erroneous website. In each analogous instance, the error and delay would be attributed to the filing party. In this instance, the appeal was filed on June 7, 2023, when the Appeals Bureau received the emailed appeal. The filing of the appeal beyond the May 12, 2023 appeal deadline is attributable to the claimant, not to the United Postal Service or to a state agency. The claimant's decision to forge the mailing address on the envelope in response to the Appeals Bureau's request for additional information was an attempt to perpetrate a fraud upon the Appeals Bureau and undermines the claimant's credibility. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the appellant appeals in the present matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the May 4, 2023 (reference 04) waiver denial decision was untimely. The reference 04 waiver denial decision remains in effect.

In the event this decision regarding timeliness of appeal is reversed upon further appeal, there is sufficient evidence in the record for a decision on substantive waiver issue.



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James E. Timberland  
Administrative Law Judge

August 28, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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:**

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

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly 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.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.