

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUTH M BIERBAUM
Claimant

APPEAL 21A-UI-16509-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/15/20
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Filing – Timely Appeal
PL116-136, Sec. 2104(f)(2) – Overpayment of Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On July 27, 2021, Ruth Bierbaum (claimant/appellant) filed an appeal from the decision dated June 16, 2021 (reference 03) that determined claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$8,400.00 based on a decision denying benefits.

A telephone hearing was held on September 17, 2021. The parties were properly notified of the hearing. Claimant participated personally. Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the claimant overpaid FPUC?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on June 16, 2021. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 14, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on July 27, 2021.

Claimant did receive the decision. The delay in appealing was due to Department error. Claimant went to a Workforce Center and completed an appeal form, and was told it would be faxed to the Appeals Bureau. However, claimant later learned it was not faxed as promised. She mailed the appeal personally at that time.

The administrative record shows claimant received FPUC in the amount of \$600.00 per week from the benefit week ending April 4, 2020 through the benefit week ending June 27, 2020 and again on July 25, 2020. The total amount of FPUC paid during this period is \$8,400.00. Claimant

was subsequently determined to be ineligible for benefits during that period in a decision dated July 7, 2020. That decision remains in force.

Claimant was subsequently allowed Pandemic Unemployment Assistance (PUA) in the amount of \$203.00 per week from the benefit week ending March 15, 2020 through the benefit week ending June 12, 2021. It does not appear claimant has yet received PUA or related FPUC payments during the weeks she was initially allowed unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated June 16, 2021 (reference 03) that determined claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$8,400.00 based on a decision denying benefits is AFFIRMED.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212

N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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 administrative law judge finds there is good cause for delay and the appeal is therefore timely. The delay in appealing was due to Department error or misinformation. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

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, except that the State agency may waive such repayment if it determines that –

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

The administrative record shows claimant received FPUC in the amount of \$600.00 per week from the benefit week ending April 4, 2020 through the benefit week ending June 27, 2020 and again on July 25, 2020. The total amount of FPUC paid during this period is \$8,400.00. Claimant was subsequently determined to be ineligible for benefits during that period in a decision dated July 7, 2020. That decision remains in force.

Because the claimant is ineligible for regular unemployment insurance (UI) benefits during the above period, she is ineligible for FPUC during that period. Claimant has therefore been overpaid FPUC in the amount of \$8,400.00.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated June 16, 2021 (reference 03) that determined claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$8,400.00 based on a decision denying benefits is AFFIRMED.

REMAND:

This matter is REMANDED for issuance of outstanding PUA and related FPUC payments. Those payments shall be withheld to the extent allowed by law to offset any overpayments.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 22, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

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 this decision determines you have been overpaid FPUC and/or PEUC, you may request a waiver of the overpayment. Instructions for requesting a waiver can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.