

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**SARA S ANDERSEN**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 23A-UI-04068-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20  
Claimant: Appellant (1R)**

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Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.6(2) – Timely Appeal

**STATEMENT OF THE CASE:**

Sara S. Andersen, the claimant/appellant, filed an appeal from the Iowa Workforce Development May 27, 2021 (reference 02) unemployment insurance (UI) decision. The decision concluded that IWD overpaid Ms. Andersen REGULAR (state) UI benefits in the total gross amount of \$10,860.00 for 24 weeks between March 22, 2020 and September 5, 2020 because the September 11, 2020 (reference 01) UI decision had found her not eligible for those benefits based on how her job ended with employer Youth Shelter Care of North Centr. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed a notice of hearing to Ms. Andersen. The undersigned administrative law judge held a telephone hearing on May 4, 2023. The undersigned heard Appeals 23A-UI-04067-DZ-T and 23A-UI-04068-DZ-T together and created one hearing record. Ms. Andersen participated personally. The undersigned took official notice of the administrative record.

**ISSUES:**

Did Ms. Andersen file her appeal on time?  
Did IWD overpaid Ms. Andersen REGULAR (state) UI benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the undersigned finds: IWD mailed the May 27, 2021, (reference 02) UI decision to Ms. Andersen at the correct address on May 27, 2021. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Sunday, June 6, 2021. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, June 7, 2021. Ms. Andersen's address had not changed, and she was not aware of any issues receiving mail, but she did not receive the decision.

At some point after May 27, 2021, Ms. Andersen began receiving overpayment statements from IWD telling her that she owes IWD \$10,860.00. This was the first time Ms. Andersen knew that she owed money to IWD. Ms. Andersen contacted IWD via phone and email many times, and she went to the IWD Fort Dodge local office to try to understand why she owed IWD money and what was going on with her PUA application.

On August 11, 2021, IWD mailed Ms. Andersen another decision. This decision, a reference 04 UI decision, notified Ms. Andersen that IWD concluded that she was eligible for PUA benefits in the weekly amount of \$406.00 as of Sunday, March 15, 2020. The appeal deadline in this decision was Sunday, August 22, 2021. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, August 23, 2021. Ms. Andersen's address was the same and she was not aware of any issues receiving mail, but she did not receive this decision. That same day, Ms. Andersen sent IWD another email explaining her situation, asking for help resolving her situation and asking for an update on her PUA application.

Sometime in late 2021, Ms. Andersen contacted IWD again to check on her PUA application. The IWD representative told Ms. Andersen that she was eligible for PUA benefits through June 2020 and that IWD had sent her the decision in the mail. Ms. Andersen stated that she did not receive the decision and she asked why she was eligible only through June 2020. The representative told Ms. Andersen that the June 2020 date was because her child could attend daycare at that time. The representative also told Ms. Andersen that IWD would resend her a copy of the August 11, 2021 decision, and she could appeal the decision. Ms. Andersen never received the August 11, 2021 PUA decision.

On January 21, 2022, Ms. Andersen emailed IWD again because she received another overpayment statement telling her that she owed IWD \$10,860.00. Ms. Andersen asked the representative for help. Ms. Andersen told the representative that IWD told her she was eligible for PUA benefits but IWD was still sending her statements saying she owed \$10,860.00 to IWD.

On April 6, 2023, IWD mailed Ms. Andersen another UI decision. This decision, the reference 03 UI decision, notified Ms. Andersen that IWD is withholding her Iowa income tax refund, including a \$7.00 transfer fee from the Iowa Department of Administrative Services (DAS), to pay off an overpayment of UI benefits she owes to IWD. The appeal deadline in this decision was Sunday, April 16, 2023. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, April 17, 2023.

Ms. Andersen received this decision in the mail. Ms. Andersen filed an appeal via fax on April 14, 2023. Ms. Andersen also mailed a copy of her appeal the same day. The DIA UI Appeals Bureau received Ms. Andersen's mailed appeal on April 19, 2023. The DIA UI Appeals Bureau did not receive Ms. Andersen's faxed appeal. The DIA UI Appeals Bureau set up appeals for the reference 01, 02, 03 and 04 UI decisions. This appeal involves only the reference 02 UI decision. Appeals 23A-UI-04067-DZ-T, 23A-UI-04069-DZ-T, and 23A-DUA-00005-DZ-T deal with the reference 01, 03 and 04 decisions, respectively.

The undersigned further finds: Ms. Andersen filed an initial claim for REGULAR (state) UI benefits effective March 22, 2020. IWD set her weekly UI benefit amount at \$463.00. Ms. Andersen filed weekly UI claims for 34 weeks between March 22, 2020 and November 14, 2020. Based on the wages she reported, IWD sent Ms. Andersen REGULAR (state) UI benefits as follows:

- \$281.00 for the week of March 22-28,
- \$411.00 for the week of March 29 through April 4,
- \$463.00 for the week of April 5-11,
- \$445.00 for the week of April 12-18, and
- \$463.00 each week for the 20 weeks, or \$9,260.00, between April 19 and September 5.

In total, IWD sent Ms. Andersen \$10,860.00 (\$281.00 + \$411.00 + \$463.00 + \$445.00 + \$9,260.00) in REGULAR (state) UI benefits. IWD sent Ms. Andersen these benefits because IWD had made a policy decision, given the global COVID-19 pandemic, to send UI benefits to claimants who filed an initial UI claim and weekly UI claims even if IWD had not yet decided if claimants were eligible for benefits. When IWD sent Ms. Andersen the \$10,860.00 in REGULAR (state) UI benefits, IWD had not yet decided if she was eligible for these benefits.

Almost six months after Ms. Andersen filed her UI claim and after IWD had already sent her money, IWD mailed Ms. Andersen a September 11, 2020 (reference 01) UI decision. This decision denied Ms. Andersen REGULAR (state) UI benefits because IWD concluded that she voluntarily quit working for employer Youth Shelter Care of North Centr on March 22, 2020 and she did not give IWD evidence showing that she had good cause to quit. That meant Ms. Andersen was not eligible for UI benefits as of March 22, 2020. IWD stopped sending Ms. Andersen benefits and did not pay her for the 10 weeks between September 6, 2020 and November 14, 2020.

Ms. Andersen appealed the September 11, 2020 (reference 01) UI decision. The undersigned's decision in Appeal 23A-UI-04067-DZ-T concluded that Ms. Andersen did not file her appeal on time and affirmed the reference 01 UI decision. That meant Ms. Andersen is not eligible for REGULAR (state) UI benefits as of March 22, 2020.

Even though IWD found Ms. Andersen eligible for PUA benefits, IWD never sent her PUA benefits. Per the undersigned's decision in 23A-DUA-00005-DZ-T, Ms. Andersen is eligible for PUA benefits from March 15, 2023 through January 2, 2021, or for 42 weeks. PUA weekly benefits of \$406.00 times 42 weeks is \$17,052.00.

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

For the reasons that follow, the undersigned concludes Ms. Andersen filed her appeal of the May 27, 2021 (reference 02) UI decision on time.

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:

2. 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:
  - (2) 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 undersigned has no authority to change the decision of a representative if a timely appeal is not filed.<sup>1</sup> Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.<sup>2</sup>

Ms. Andersen did not receive the May 27, 2021 (reference 02) UI decision before the appeal deadline and, therefore, could not have filed an appeal by the deadline. The notice provision of the decision was invalid. Ms. Andersen's delay in filing her appeal was due to an error or misinformation from IWD or due to delay or other action of the United States Postal Service. Ms. Andersen filed her appeal as soon as she received a decision that told her she could appeal – the April 6, 2023 (reference 03) UI decision. Ms. Andersen filed her appeal on time.

The undersigned further concludes as follows:

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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<sup>1</sup> *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

<sup>2</sup> *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).

IWD overpaid Ms. Andersen REGULAR (state) UI benefits in the total gross amount of \$10,860.00 for 24 weeks between March 22, 2020 and September 5, 2020. The reason for the overpayment is that Ms. Andersen is not eligible for these benefits because of the September 11, 2020 (reference 0) UI decision that was affirmed by the undersigned's decision in Appeal 23A-UI-04067-DZ-T. But even though IWD found Ms. Andersen eligible for PUA benefits, IWD never sent her PUA benefits. This matter should be remanded (sent back) to the IWD Benefits Bureau IWD to recover the overpayment of REGULAR (state) UI benefits from the PUA (federal) benefits Ms. Andersen is owed to the greatest extent possible.

**DECISION:**

The May 27, 2021 (reference 02) UI decision is AFFIRMED, PENDING REMAND. IWD overpaid Ms. Andersen REGULAR (state) UI benefits in the total gross amount of \$10,860.00. Ms. Andersen is required to repay these benefits.

**REMAND:**

This matter is REMANDED (sent back) to the IWD Benefits Bureau for IWD to recover, to the greatest extent possible, the overpayment of REGULAR (state) UI benefits from the PUA (federal) benefits Ms. Andersen is owed.



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Daniel Zeno  
Administrative Law Judge

May 16, 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**

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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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**

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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.