

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACKLYN A KALLENBERGER
Claimant

APPEAL 22A-UI-03828-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

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

STATEMENT OF THE CASE:

Jacklyn A Kallenberger, the claimant/appellant, filed an appeal from the July 27, 2021 (reference 03) unemployment insurance (UI) decision that concluded she was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$2,700.00. The parties were properly notified about the hearing. A telephone hearing was held on March 14, 2022. Ms. Kallenberger participated personally. The agency did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Kallenberger's appeal filed on time?
Has Ms. Kallenberger been overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Kallenberger at the correct address on July 27, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by August 6, 2021.

Ms. Kallenberger received the decision in the mail on July 29. Ms. Kallenberger called IWD that day and the representative told her not do anything because IWD was trying to reverse the overpayments. Ms. Kallenberger had applied for, and IWD had approved her for, Pandemic Unemployment Assistance (PUA) benefits as of December 6, 2020. Ms. Kallenberger continued to receive overpayment notices. In November 2021, Ms. Kallenberger called IWD again and the representative told her that she could appeal the decision online. Ms. Kallenberger is older and not tech savvy. Ms. Kallenberger completed an online waiver application on November 14. Ms. Kallenberger thought she was submitting an appeal. Ms. Kallenberger continued to get overpayment statements and no decision on what she thought was her appeal. In late January 2022 Ms. Kallenberger called IWD again and the representative told her that she had applied for the waiver but had not submitted an appeal. Ms.

Kallenberger filed an appeal online on January 28, 2022. The appeal was received by Iowa Workforce Development on January 28, 2022.

The administrative law judge further finds: Ms. Kallenberger filed an initial claim for REGULAR UI benefits effective March 22, 2020. Ms. Kallenberger received REGULAR UI benefits on her claim. Ms. Kallenberger also received FPUC benefits in the gross amount of \$2,700.00 for 9 weeks between March 21, 2021 and May 22, 2021.

FPUC was a program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 that provided additional payment to those individuals that are receiving state or federal unemployment insurance payments. It is funded by the federal government, not by state unemployment taxes paid by employers. The Continued Assistance for Unemployed Workers Act of 2020 (enacted December 27, 2020) and American Rescue Act of 2021 (enacted March 11, 2021) extended FPUC benefits for weeks of unemployment to September 6, 2021. The FPUC amount was \$600.00 per week from April 5, 2020 through July 31, 2020. The FPUC amount was \$300.00 per week from December 27, 2020 through September 5, 2021. Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the FPUC program, effective June 12, 2021.

Over one year and four months after she filed her initial claim and had already received REGULAR UI benefits and FPUC benefits, IWD issued a reference 01 decision finding Ms. Kallenberger not eligible for REGULAR UI benefits because of a March 16, 2020 voluntary quit with employer D of S Foods Inc. Ms. Kallenberger appealed the decision to the Iowa Workforce Development Appeals Bureau. The administrative law judge's decision in Appeal 22A-UI-03826-DZ-T affirmed the reference 01 decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Kallenberger's appeal of the reference 03 decision was filed 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:

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).

Ms. Kallenberger received the reference 03 decision before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Kallenberger's delay in filing her appeal was due to the department telling her not to take any action and then due to her non-tech savviness. Ms. Kallenberger tried to file an appeal as soon as she knew she could and did file an appeal when she learned she had not filed an appeal earlier. Ms. Kallenberger's appeal of the reference 03 decision was filed on time.

The administrative law judge further concludes Ms. Kallenberger has been overpaid FPUC benefits.

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.

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...

Since Ms. Kallenberger is not eligible for REGULAR UI benefits, she is also not eligible for FPUC benefits. Ms. Kallenberger has been overpaid FPUC benefits in the gross amount of \$2,700.00 for 9 weeks between March 21, 2021 and May 22, 2021, which should be repaid.

DECISION:

Ms. Kallenberger's appeal was filed on time. The July 27, 2021, (reference 03) unemployment insurance decision is AFFIRMED. Ms. Kallenberger has been overpaid FPUC benefits in the gross amount of \$2,700.00, which must be repaid.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for a review of whether Ms. Kallenberger is eligible for FPUC benefits based on her approval for PUA benefits.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 28, 2022

Decision Dated and Mailed

dz/abd

NOTE TO MS. KALLENBERGER:

- This decision determines you have been overpaid FPUC benefits. 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.
- You applied for a waiver of this overpayment on November 14, 2021. **You can check on your waiver application by calling 888-848-7442 (Tax Bureau) or 866-239-0843 (Customer Service)**
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.