

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DARLINGTON S DOLOPEI**  
Claimant

**APPEAL 21A-UI-24531-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/19/20  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Darlington S Dolopei, the claimant/appellant, filed an appeal from the October 1, 2021, (reference 04) unemployment insurance (UI) decision that concluded he was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$3,600.00. The parties were properly notified about the hearing. A telephone hearing was held on January 4, 2022. Mr. Dolopei participated and testified. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Mr. Dolopei's appeal filed on time?  
Has Mr. Dolopei 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 Mr. Dolopei at the correct address on October 1, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by October 11, 2021.

Mr. Dolopei had moved in May 2021. He updated his address with the U.S. Postal Services, but he did not update his address with IWD. Mr. Dolopei had been filing weekly claims as of March 21, 2021. He continued to file weekly claims through June 26, 2021.

IWD issued this decision, and one additional decision finding Mr. Dolopei was overpaid REGULAR UI benefits. Mr. Dolopei received a billing notice from IWD in November 2021 telling he was overpaid. Mr. Dolopei immediately went to the IWD office where the representative told him he could file an appeal. Mr. Dolopei filed an appeal via email on November 1, 2021. The appeal was received by Iowa Workforce Development on November 1, 2021.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Dolopei's appeal of the reference 04 decision was not 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).

Mr. Dolopei moved and continued to file weekly claims, but he did not tell IWD his new address. Mr. Dolopei's delay in filing his appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay in filing his appeal before the deadline. Mr. Dolopei's appeal of the reference 04 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

**DECISION:**

Mr. Dolopei's appeal of the reference 04 decision was not filed on time. The October 1, 2021 (reference 04) decision is affirmed.



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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

January 27, 2022  
Decision Dated and Mailed

dz/mh

**NOTE TO MR. DOLOPEI:**

- 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 may also request a waiver of this overpayment either 1) online, OR 2) in writing by mail.**
- The **online request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written request** must include the following information:
  - Your name & address.
  - Decision number/date of decision.
  - Dollar amount of overpayment requested for waiver.
  - Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development  
Overpayment waiver request  
1000 East Grand Avenue  
Des Moines, IA 50319
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.