

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

NANCY S CLARK

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-18118-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20

Claimant: Appellant (2)

Iowa Code § 96.3(7) – Overpayment of Benefits
Public Law 116-136, sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On October 13, 2022, claimant Nancy S. Clark filed an appeal from the September 26, 2022 (reference 03) unemployment insurance decision that found she was overpaid \$2,400.00 in Federal Pandemic Unemployment Compensation (“FPUC”) benefits for the period of May 10, 2020 through June 6, 2020 and imposed a penalty for misrepresentation. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Thursday, January 12, 2023. Appeal numbers 22A-UI-18116-LJ-T, 22A-UI-18117-LJ-T, 22A-UI-18118-LJ-T, 22A-UI-18119-LJ-T, and 22A-UI-18120-LJ-T were heard together and created one record. The claimant, Nancy S. Clark, participated and was represented by attorney Marlon Mormann. Iowa Workforce Development participated through witnesses Debbie Rumbaugh, Investigator 2; and Daniel Noonan, Workforce Program Coordinator; and was represented by attorney Jeffrey Koncsol. Claimant’s Exhibits A through G and Department’s Exhibits 1-1 through 9-5 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether the appeal is timely. Whether there is good cause to treat the appeal as timely.
Whether claimant was overpaid FPUC benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for benefits effective May 3, 2020, after separating from employment with Mercy Hospital. Claimant’s weekly benefit amount (WBA) throughout her claim year was \$500.00. She filed weekly continued claims for benefits between May 3, 2020 and April 10, 2021. In connection with these weekly claims, claimant received FPUC benefits in the gross amount of \$2,400.00 for the four-week period between May 10, 2020 and June 6, 2020.

On September 26, 2022, IWD issued a decision (reference 01) that found claimant was overpaid regular unemployment insurance ("UI") benefits based upon a failure to report her earnings while filing weekly claims and assessed an administrative penalty for fraud.¹ On appeal, an administrative law judge determined that the issue of whether claimant had been overpaid between May 10, 2020 and June 6, 2020 must be remanded back to the Benefits Bureau of Iowa Workforce Development for further fact-finding and determination. (See appeal 22A-UI-18116-LJ-T). The administrative law judge's decision remains in effect.

On September 26, 2022, IWD issued a decision (reference 04) finding claimant was overpaid FPUC benefits in the amount of \$2,400.00 for the four-week period between May 10, 2020 and June 6, 2020 due to incorrectly reported wages earned with Mercy Hospital. In addition, IWD imposed a 15% administrative penalty for fraud because of what Rumbaugh concluded was deliberate under-reporting of income. (Department Exhibit 6-2)

Claimant objects to the imposition of the administrative penalty. Claimant testified that she was going through significant personal turmoil during her claim year, and that affected her state of mind. She also submitted statements from multiple individuals, including family, friends, and former employers, in support of this claim. (Claimant's Exhibits B, C, D, and E) Claimant denies intent to defraud Iowa Workforce Development.

The five unemployment insurance decisions were all mailed to the claimant's last-known address of record in Fairfield, Iowa on September 26, 2022. The claimant did not receive the decisions immediately, as she had moved to Oskaloosa, Iowa. The decisions were all forwarded by the U.S. Postal Service, and she received them in the mail on October 13, 2022. Claimant immediately took the decisions to her attorney, and her attorney immediately helped her file an appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, I conclude there is not sufficient information in the record to support a determination that claimant has been overpaid FPUC benefits between May 10, 2020 and June 6, 2020. The underlying decision must be reversed.

The first issue is whether the claimant filed a timely appeal. I believe the evidence in the record shows that claimant's appeal should be accepted as timely filed. 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:

¹ When calculating claimant's overpayment of FPUC benefits received in connection with her PEUC benefits, IWD did not include the FPUC benefits paid for the weeks ending January 9, 2021; January 16, 2021; or April 10, 2021.

(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).

The record shows that the claimant did not have a reasonable opportunity to file a timely appeal. The claimant last had an active claim for benefits with IWD in July 2022, and the address she had on file with the agency was correct as of the last week she filed for benefits, the week ending July 9, 2022. Claimant's failure to provide an address change to IWD when she moved at the end of August 2022 was not unreasonable. Moreover, the decisions issued to claimant were regarding her claim year effective May 3, 2020, and relate to weekly claims she last filed in April 2021. Claimant could not have reasonably expected overpayment decisions to take 17 months to calculate and process from IWD. This delay was prompted by and perpetuated by the agency. See Iowa Admin. Code r. 871-24.35(2). Therefore, I find good cause to treat claimant's appeal as timely filed.

The remaining issue is whether claimant has been overpaid FPUC benefits between May 10, 2020 and June 6, 2020.

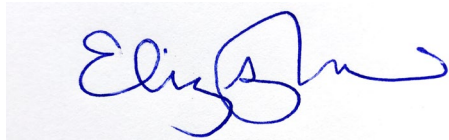
PL 116-136 Section 2104 of the CARES Act created a program in which an additional \$600.00 per week was payable to claimants who were eligible for at least \$1.00 per week in benefits stemming from other programs including regular unemployment insurance funded by the State of Iowa, Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance, Iowa Extended benefits, and Trade Act benefits. This initial program ran from March 29, 2020 through July 25, 2020. Claimants were only eligible to receive FPUC payments

if they were entitled to receive benefits from another applicable program. The payments of FPUC benefits were automatic so long as a claimant was determined to be eligible under one of the other applicable programs.

These benefits were issued to claimant automatically based on her apparent eligibility for regular unemployment insurance benefits. A determination on whether claimant is eligible for the UI benefits she received has not yet been made, as it requires further fact-finding involving both the claimant and former employer Mercy Hospital. Because the claimant has not been found overpaid the weeks between May 10, 2020 and June 6, 2020 at this time, she cannot have been overpaid FPUC benefits those weeks either. The overpayment must be reversed at this time.

DECISION:

The September 26, 2022 (reference 03) unemployment insurance decision reversed. Claimant has not been overpaid \$2,400.00 in FPUC benefits.



Elizabeth A. Johnson
Administrative Law Judge

January 31, 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
4th 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 adquiriera 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.