

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEJANDRO HERNANDEZ
Claimant

APPEAL NO: 21A-UI-13068-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/21/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 13, 2020, (reference 03) unemployment insurance decision that concluded he was overpaid \$1,719.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on August 5, 2021. The hearing was held together with Appeals 21A-UI-15771-JC-T, 21A-UI-15772-JC-T, and 21A-UI-13067-JC-T. The claimant participated personally. Official notice of the administrative records was taken. Department Exhibit 1 was admitted.

ISSUES:

Is the appeal timely?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of June 21, 2020. The claimant filed for and received a total of \$1,719.00 in regular, state unemployment insurance benefits for the weeks between June 21, 2020 and May 12, 2021.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 21A-UI- UI-13067-JC-T.

Claimant moved from the address of record (on Dubuque Street) in June 2020 and did not notify IWD of the change of address. He continued to make weekly unemployment claims. Because claimant did not notify IWD he had moved, he did not receive the initial decision dated May 13, 2021, which alerted him to the fact he had been overpaid benefits. The decision also stated an appeal must be filed by May 27, 2021. Claimant filed his appeal June 11, 2021 (See Department Exhibit D-1). Claimant took no steps to change his address with IWD until May 2021.

The Claimant Handbook, (under “Eligibility Requirements”) which claimant agreed to read at the time of opening his claim, notifies him that he is to contact IWD if he moves or leaves the area for more than three days. (See <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-claimant-handbook>)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to file a timely appeal.

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).

Here, claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. Claimant did not receive the decision

in a timely manner because claimant had not taken the proper steps to update his address with Iowa Workforce Development. This is not the sort of unforeseeable delay or error intended to be counteracted by the administrative rule. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

In the alternative, even if claimant's appeal was deemed timely, the claimant would still be overpaid benefits.

Iowa Code section 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.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$1,719.00 in unemployment insurance benefits.

DECISION:

The May 13, 2021 (reference 02) unemployment insurance decision is affirmed. Claimant failed to file a timely appeal. The decision of the representative remains in effect.



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

August 11, 2021
Decision Dated and Mailed

jlb/mh

NOTE TO CLAIMANT:

Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>