

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JONATHAN R VILLAVICENCIO**  
Claimant

**APPEAL 21A-UI-21000-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 12/22/19  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On September 20, 2021, the claimant Jonathan R. Villavicencio appealed a representative's decision dated July 10, 2021 (reference 03), that concluded the claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits due to a disqualification decision. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on November 17, 2021, and was consolidated with the hearing for appeals 21A-UI-20997-S2-T and 21A-UI-20999-S2-T. Claimant participated personally. Lisa Villavicencio testified on claimant's behalf. Claimant's Exhibits A and B were admitted. The administrative law judge took official notice of the administrative record and Exhibit D-1.

**ISSUES:**

Is claimant's appeal timely?  
Was claimant overpaid FPUC benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 24, 2021, Iowa Workforce Development (IWD) issued a decision (reference 01) that denied claimant regular state unemployment insurance (UI) benefits. That decision has been affirmed. See 21A-UI-20997-S2-T. Claimant was issued FPUC benefits in the gross amount of \$4,500.00 for the fifteen-week period ending April 10, 2021.

A disqualification decision was mailed to claimant's last known address of record on July 10, 2021. He did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 20, 2021. The appeal was not filed until September 20, 2021, which is after the date noticed on the decision. When claimant received the overpayment decision, he contacted IWD. A representative helped claimant file a waiver request, while claimant believed he was filing an appeal of the decision. When he followed up with IWD in September, he learned his appeal was never filed. He promptly filed this appeal.

## REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant's appeal is timely. For the following reasons the administrative law judge concludes it is.

Iowa Code section 96.6(2) provides:

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

Claimant received misinformation from IWD and thus was not able to timely file an appeal. The appellant attempted to file his appeal in a timely manner before the July 20, 2021, deadline, but instead filed a waiver request. Once claimant discovered that he had not filed the appeal, he promptly submitted one. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant was overpaid FPUC benefits for the period in question. For the following reasons the administrative law judge concludes he was.

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").

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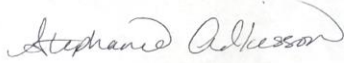
(f) Fraud and Overpayments

(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...

The decision that denied claimant PEUC benefits remains in effect. Therefore, claimant has received FPUC benefits to which they were not entitled. The administrative law judge concludes that claimant has been overpaid FPUC benefits in the amount outlined in the findings of fact above. Those benefits must be recovered in accordance with Iowa law.

**DECISION:**

The appeal is timely. The decision of the representative dated July 10, 2021, (reference 03) is affirmed. Claimant has been overpaid FPUC benefits in the amount of \$4,500.00, which must be repaid.



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Stephanie Adkisson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

December 20, 2021

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Decision Dated and Mailed

sa/abd

**NOTE TO CLAIMANT:**

- 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. The written request must include the following information:
  1. Claimant name & address.
  2. Decision number/date of decision.
  3. Dollar amount of overpayment requested for waiver.
  4. 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

- This Information can also be found on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.