

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

BRANDON M GALLOWAY
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-18697-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Brandon M. Galloway, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) November 5, 2021, (reference 04) unemployment insurance (UI) decision. The decision concluded Mr. Galloway was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$300.00 for the week of December 27, 2020 through January 2, 2021. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2022. Appeals 22A-UI-18695-DZ-T, 22A-UI-18696-DZ-T, 22A-UI-18697-DZ-T, and 22A-UI-18698-DZ-T were heard together and formed one hearing record. Mr. Galloway participated personally. The employer participated through Al Arp, owner. Brad McBride observed the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is. Mr. Galloway's appeal filed on time?
Has Mr. Galloway been overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the November 5, 2021, (reference 04) UI decision to Mr. Galloway at his address of record on November 5, 2021. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by November 15, 2021.

Mr. Galloway had filed an initial UI claim effective December 1, 2019. IWD then issued four UI decisions in the 2019 claim year about employers PeopleReady Inc. (reference 01), Tri-County Enterprises, Inc (reference 02), Whirlpool Corporation (reference 03), and Aerotek Inc (reference 04). All four of those UI decisions had found Mr. Galloway eligible for UI benefits. Mr. Galloway filed weekly UI claims for 27 weeks between December 1, 2019 and December 5, 2020 and IWD paid Mr. Galloway REGULAR (state) UI benefits on his claim.

Section 2107 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 created Pandemic Emergency Unemployment Compensation (PEUC) as a new temporary federal program that initially provided up to 13 additional weeks of UI benefits to people who had exhausted their REGULAR (state) UI entitlement. After Mr. Galloway had used all of his REGULAR (state) UI benefits, IWD then sent Mr. Galloway PEUC benefits. In relevant part, IWD paid Mr. Galloway PEUC benefits in the gross amount of \$1,257.00 for 7 weeks between October 11, 2020 and November 28, 2020 (\$51.00 for one week and \$201.00 each week for 6 weeks).

After IWD had already sent Mr. Galloway PEUC benefits, IWD issued a January 12, 2021, (reference 06) UI decision in the 2019 claim year about employer Grass Lawn Service, Inc. That decision found Mr. Galloway not eligible for REGULAR (state) UI benefits because IWD concluded that employer Grass Lawn Service, Inc had discharged Mr. Galloway from work on October 13, 2020 for conduct not in the best interest of the employer. Mr. Galloway appealed that UI decision. An appeal hearing was scheduled for March 22, 2021. Mr. Galloway did not participate in the appeal hearing. The administrative law judge's March 24, 2021 decision in Appeal 21A-UI-03305-JC-T dismissed Mr. Galloway's appeal because he did not participate in the hearing. That meant Mr. Galloway was not eligible for REGULAR (state) UI benefits from the time his job ended with employer Grass Lawn Service, Inc on October 13, 2020.

Mr. Galloway filed a new initial UI claim effective November 29, 2020. IWD then issued a UI decision in the 2020 claim year about employer Tri-County Enterprises, Inc (reference 01). That UI decision found Mr. Galloway eligible for UI benefits in the 2020 claim year. In relevant part, Mr. Galloway filed weekly UI claims for 5 weeks between November 29, 2020 and January 2, 2021. IWD paid Mr. Galloway REGULAR (state) UI benefits in the gross amount of \$1,225.00 for those five weeks (\$245.00 each week for 5 weeks). IWD also sent Mr. Galloway FPUC benefits in the gross amount of \$300.00 for the week of December 27, 2020 through January 2, 2021. FPUC was a program under the CARES Act that provided additional payment to people who were receiving state or federal UI payments. The FPUC amount was \$300.00 per week from December 27, 2020 through September 5, 2021.

After IWD had already sent Mr. Galloway REGULAR (state) UI benefits and FPUC in the 2020 claim year, IWD issued mailed Mr. Galloway four UI decisions on November 5, 2021: the reference 04 UI decision at issue in this appeal, a reference 02, a reference 03, and a reference 07 UI decision.

- The reference 04 UI decision concluded that Mr. Galloway was overpaid FPUC benefits in the November 29, 2020 claim year in the gross amount of \$300.00 for the week of December 27, 2020 through January 2, 2021 because he was not eligible for those benefits per the November 5, 2021 (reference 03) UI decision.
- The reference 02 UI decision denied Mr. Galloway REGULAR (state) UI benefits in the November 29, 2020 claim year because the January 12, 2021 (reference 06) UI decision in the December 1, 2019 claim year that had already denied him REGULAR (state) UI benefits based on how his job ended with employer Grass Lawn Service, Inc on October 13, 2020 was still in effect.
- The reference 03 UI decision concluded that Mr. Galloway was overpaid REGULAR (state) UI benefits in November 29, 2020 claim year in the gross amount of \$1,225.00 for 5 weeks between November 29, 2020 and

January 2, 2021 because he was not eligible for those benefits per the November 5, 2021 (reference 02) UI decision.

- The reference 07 UI concluded that Mr. Galloway was overpaid PEUC benefits in the December 1, 2019 claim year in the gross amount of \$1,257.00 for 7 weeks between October 11, 2020 and November 28, 2020 because of the January 12, 2021 (reference 06) UI decision in the December 1, 2019 claim year.

Mr. Galloway had moved in August 2021, and he had updated his address with the United States Postal Service (USPS). USPS forwarded all four November 5, 2021 UI decisions to Mr. Galloway's new address. Mr. Galloway received all four decisions in the mail in November 2021. Mr. Galloway had filed his 2019 and 2020 UI claims because he was separated from employment from another company, so he did not file an appeal at that time.

Mr. Galloway learned that he would be laid off from employment with his current employer for the winter of 2022. Mr. Galloway filed an appeal online on November 7, 2022 so he could get benefits in a new claim year. The appeal was received on November 7, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Galloway's appeal of the November 5, 2021 (reference 04) UI 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:

2. 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:
 - (2) 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.¹ Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.²

Mr. Galloway received the November 5, 2021 (reference 04) UI decision by the deadline and, therefore, could have filed an appeal by the appeal deadline. The notice provision of the decision was valid. Mr. Galloway'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. Mr. Galloway's appeal of the November 5, 2021 (reference 04) UI decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Mr. Galloway's appeal of the November 5, 2021 (reference 04) UI decision was not filed on time. The November 5, 2021 (reference 04) UI decision finding Mr. Galloway was overpaid FPUC benefits in the gross amount of \$300.00 is AFFIRMED.



Daniel Zeno
Administrative Law Judge

December 6, 2022
Decision Dated and Mailed

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¹ *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

² *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).

NOTE TO MR. GALLOWAY:

- You may request a waiver of this FPUC overpayment by 1) applying for a waiver online, 2) applying for a waiver in writing by mail, or 3) by filing an appeal (see the last page of this decision for appeal information).
- The **online wavier request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written waiver 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 written waiver request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319
- To check on your waiver application call **888-848-7442** or email iwdui@iwd.iowa.gov
- If this decision becomes final and you are not eligible for a waiver, you may have to repay the benefits you received.

APPEAL RIGHTS. If you disagree with this 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.