

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLYSON M REIS
Claimant

APPEAL 22A-UI-07787-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (1)

PL 116-136, Sec. 2107 – Federal Pandemic Emergency Unemployment Compensation
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 March 17, 2022, (reference 02) unemployment insurance decision that determined claimant was overpaid Pandemic Emergency Unemployment Compensation (PEUC) benefits in the amount of \$382.00 for the two-week period ending July 25, 2020. After due notice was issued, a telephone hearing was held on May 12, 2022, and was consolidated with the hearing for appeal number 22A-UI-07793-AR-T. The claimant, Allyson M. Reis, participated personally. Claimant's Exhibit A-1 through A-3 was admitted. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Is the claimant overpaid PEUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed for and has received PEUC benefits in the gross amount of \$382.00 for the two-week period ending July 25, 2020. On May 5, 2021, Iowa Workforce Development (IWD) issued a decision (reference 01) that found claimant was ineligible for PEUC benefits. That decision has been affirmed. See 21A-UI-12770-LJ-T.

An overpayment decision was mailed to claimant's last known address of record on March 17, 2022. She received that decision on March 30, 2022, which was after the deadline to appeal March 28, 2022. Claimant submitted her appeal on March 31, 2022.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code section 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. 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 appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely notice of a decision, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant filed the appeal within one day of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow the administrative law judge concludes that the claimant has been overpaid PEUC benefits.

Public Law 116-136, Sec. 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(2) PROVISIONS OF AGREEMENT. —

Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

(e) FRAUD AND OVERPAYMENTS.—

...

(2) REPAYMENT.—In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(A) the payment of such pandemic emergency unemployment compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

The decision that denied claimant PEUC benefits remains in effect. Therefore, claimant has received PEUC benefits to which they were not entitled. The administrative law judge concludes that claimant has been overpaid PEUC benefits in the amount outlined in the findings of fact above. Claimant is obligated to repay the PEUC benefits unless repayment of this obligation is waived. Instructions on how to apply for a waiver are found below.

DECISION:

The March 17, 2022, (reference 02) unemployment insurance decision is affirmed. Claimant's appeal is timely. Claimant has been overpaid PEUC benefits in the amount of \$382.00, which must be repaid.



Alexis D. Rowe
Administrative Law Judge

June 3, 2022
Decision Dated and Mailed

ar/kmj

NOTE TO CLAIMANT:

- This decision determines you have been overpaid PEUC 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.