

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

SHARLA J ASHBY
Claimant

APPEAL 22A-UI-18375-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/15/20
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(3) – Appeals
Iowa Admin. Code r. 871-24.28(6) – Prior Adjudication

STATEMENT OF THE CASE:

Sharla J. Ashby, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) November 20, 2020, (reference 03) unemployment insurance (UI) decision. The decision concluded that Ms. Ashby was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$7,800.00 for 13 weeks between March 29, 2020 and June 27, 2020 because the administrative law judge's July 15, 2020 decision in Appeal 20A-UI-05142-JC-T found that she was not eligible for UI benefits based on how her job ended with employer NIAD Center for Human Development on November 21, 2019.

The parties were properly notified about the hearing. A telephone hearing was held on November 17, 2022. Appeals 22A-UI-18374-DZ-T, 22A-UI-18375-DZ-T, and 22A-UI-18376-DZ-T were heard together and formed one hearing record. Ms. Ashby participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Ms. Ashby's appeal filed on time?
Has Ms. Ashby been overpaid FPUC benefits?
Has the issue of whether Ms. Ashby has been overpaid FPUC benefits already been adjudicated?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the UI decision to Ms. Ashby at the correct address on November 20, 2020. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by November 30, 2020. That same day, IWD also mailed Ms. Ashby another UI decision: a reference 02 UI decision. The reference 02 UI decision concluded that Ms. Ashby was overpaid

REGULAR (state) UI benefits in the gross amount of \$6,716.00 for 15 weeks between March 15, 2020 and June 27, 2020 because the administrative law judge's July 15, 2020 decision in Appeal 20A-UI-05142-JC-T found that she was not eligible for UI benefits based on how her job ended with employer NIAD Center for Human Development on November 21, 2019. Ms. Ashby had moved in August 2020, and she had updated her address with the United States Postal Service. But she did not get either decision in the mail.

On February 7, 2022, IWD mailed Ms. Ashby another UI decision: a reference 04 UI decision. The reference 04 UI decision notified Ms. Ashby that IWD was withholding her 2021 Iowa income tax refund to apply to an overpayment of UI benefits that she owes to IWD. Ms. Ashby had given IWD her street address, but she did not receive mail at her street address. She received mail at a post office box. IWD mailed the reference 04 UI decision to Ms. Ashby's street address. Ms. Ashby did not receive the decision.

Ms. Ashby filed a new UI claim effective October 2, 2022. Ms. Ashby updated her address with IWD on October 5, 2022. Sometime during the week of October 2-8, 2022, the week Ms. Ashby filed her new UI claim, an IWD representative told Ms. Ashby that she had an overpayment and told her about her appeal rights. Ms. Ashby did not know how to file an appeal. On, or about, October 26, Ms. Ashby called IWD to ask about how to file an appeal. The IWD representative told Ms. Ashby how to file an appeal. Ms. Ashby filed an appeal online the next day, October 27, 2022. The appeal was received on October 27, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Ashby's appeal of the November 20, 2020 (reference 03) 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. *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).

Ms. Ashby did not receive the November 20, 2020 (reference 03) UI decision by the deadline and, therefore, could not have filed an appeal by the appeal deadline. The notice provision of the decision was invalid. However, Ms. Ashby learned that she had an outstanding overpayment sometime during the week of October 2-8, 2022. Ms. Ashby filed her appeal more than ten days after the last day of that week, or October 8. Ms. Ashby's delay in filing her 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 her appeal. Ms. Ashby's appeal of the November 20, 2020 (reference 03) UI decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Ashby's appeal of the November 20, 2020 (reference 03) UI decision was not filed on time. The November 20, 2020 (reference 03) UI decision finding Ms. Ashby was overpaid FPUC benefits in the gross amount of \$7,800.00 is AFFIRMED.



Daniel Zeno
Administrative Law Judge

Decision Dated and Mailed

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NOTE TO MS. ASHBY:

- 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 iwduitax@iwdiowa.gov
- If this decision becomes final and you are not eligible for a waiver, you will 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 adquiera 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.