

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JIMMY L CONKLE**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-01156-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**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:**

On December 16, 2021, claimant/appellant appealed the October 13, 2021, (reference 02) decision that concluded the claimant was overpaid Federal Pandemic Emergency Unemployment Compensation (“PEUC”) benefits in the amount of \$3,337.00 for the seven-week period ending November 14, 2020. A telephonic hearing was held on February 3, 2022. Appeal number 22A-UI-01155-CS-T was heard together with this appeal and created one record. The claimant was at the hearing. The administrative law judge took official notice of the administrative record. Official notice was taken of claimant’s appeal letter.

**ISSUES:**

Is 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: A overpayment unemployment insurance decision was mailed to the claimant's last known address of record on October 13, 2021. Claimant has his mail sent to this address however he also lives in Kansas City. Claimant goes to the address where the letter was mailed at least once a month. Claimant’s wife checks the mail for him and notifies him of any letters that are important. Claimant received the decision within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 23, 2021. The appeal was not filed until December 16, 2021, which is after the date noticed on the unemployment insurance decision because he was waiting to see if he qualified for unemployment insurance benefits from the state of Missouri. On or about October 26, 2021, claimant contacted Iowa Workforce Development about the overpayment letter. IWD informed claimant that he needed to file a claim in Missouri since he had wages in the state. Claimant filed a claim in Missouri and did not immediately hear from them. Claimant contacted Missouri’s unemployment to determine the

status of his claim a couple weeks later. During the phone call he was informed that he was not eligible for benefits in Missouri. Claimant then filed an appeal of the overpayment decision on December 16, 2021.

The claimant originally filed a claim in Iowa with an effective date of March 22, 2020. Claimant's weekly benefit amount was \$481.00. Claimant received state unemployment benefits beginning March 29, 2020 through September 19, 2020. Claimant received his maximum benefit amount of \$12,506.00. On September 20, 2020, claimant was put on Pandemic Extended Unemployment Compensation (PEUC) benefits. Claimant received PEUC benefits through week ending November 14, 2020. Claimant received a total of \$3,337.00 in PEUC benefits.

Claimant was disqualified from receiving PEUC benefits in a decision dated June 11, 2021 (ref. 01). The decision found claimant was eligible for benefit in Missouri effective September 20, 2020. The decision was based on claimant earning \$1,324.88 wages in the 4<sup>th</sup> quarter of 2019 in Missouri. The claimant appealed the ref. 01 decision in Appeal 22A-UI-01155-CS-T. That decision has been affirmed based on timeliness of the appeal.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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 have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

The claimant received the overpayment decision. Claimant called IWD on or about October 26, 2021, but there was no evidence presented that IWD told claimant not to appeal the overpayment decision. Since claimant failed to file the appeal by the October 23, 2021, deadline his appeal is untimely.

**DECISION:**

The October 13, 2021, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



---

Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

February 24, 2022  
Decision Dated and Mailed

cs/scn

*Note to Claimant:*

This decision determines you have been overpaid PEUC benefits under the CARES Act. 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. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>