

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RYAN J FERKEL**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-00958-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/05/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136 – Federal Pandemic Emergency Unemployment Compensation (PEUC)  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 27, 2021 unemployment insurance decision that concluded he was overpaid \$6,500 in PEUC benefits. After proper notice, a telephone hearing was conducted on February 2, 2022. The hearing was held together with Appeals 22A-UI-00959-JC-T and 22A-UI-00957-JC-T. The claimant participated. Official notice of the administrative records was taken. Department Exhibit 1 (Appeal letter) was admitted.

**ISSUES:**

Is the appeal timely?

Is the claimant overpaid Federal Pandemic Emergency Unemployment Compensation (PEUC)?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of January 5, 2020.

The claimant received federal unemployment insurance benefits through Federal Pandemic Emergency Unemployment Compensation (PEUC). Claimant received \$6,500.00 in federal benefits for the period of August 30, 2020 and December 5, 2020.

The unemployment insurance decision that disqualified the claimant from receiving PEUC benefits has been affirmed in a decision of the administrative law judge in appeal 22A-UI-00957-JC-T.

An initial decision concluding claimant was overpaid PEUC benefits was mailed to the claimant/appellant's address of record on October 27, 2021. The decision contained a warning that an appeal must be filed within ten days of the mailing date. Claimant was deployed through the Illinois National Guard to Afghanistan from December 13, 2020 until October 8, 2020. He was on leave from October 8, 2020 until November 8, 2020. During this period, claimant did not

receive his mail. Upon return home, he received the decision on November 8, 2021. Appellant filed the appeal on November 10, 2021 (See Department Exhibit 1).

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

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d

471, 472 (Iowa 1973). The claimant filed the appeal within two days of receipt. Therefore, the appeal shall be accepted as timely.

The next issue in this case is whether the claimant was overpaid PEUC benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

PL 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 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 terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for pandemic emergency unemployment compensation and the payment thereof, except where otherwise inconsistent

with the provisions of this section or with the regulations or operating instructions of the Secretary promulgated to carry out this section... See PL 116-136 Sec 2107 (4)(B).

Since the decision disqualifying the claimant has been affirmed, this also disqualifies claimant from receiving Federal Pandemic Emergency Unemployment Compensation (PEUC). The claimant was overpaid \$6,500.00 in Federal Pandemic Emergency Unemployment Compensation (PEUC).

This decision determines you are overpaid benefits, and the administrative law judge lacks authority to waive the overpayment. 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/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.

**DECISION:**

The unemployment insurance decision dated October 27, 2021, is affirmed. The claimant was overpaid \$6,500.00 in Federal Pandemic Emergency Unemployment Compensation (PEUC).



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

February 28, 2022  
Decision Dated and Mailed

jlb/mh

*Note to Claimant:*

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