

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

ZACHARY C BROTHERS

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 23A-UI-03662-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/12/20
Claimant: Appellant (4)**

PL 116-136, Sec. 2104(f) – Federal Pandemic Unemployment Compensation Waiver
PL 116-136, Sec. 2012 – Federal Pandemic Unemployment Assistance
Section 201(D) – Federal CARES Act
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On April 8, 2023, claimant filed an appeal from the March 23, 2023, (reference 03) unemployment insurance decision that denied claimant's application to waive repayment of overpayments of Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) benefits. After due notice was issued, a telephone hearing was held April 24, 2023. Claimant, Zachary C. Brothers, participated personally. Iowa Workforce Development (IWD) did not participate. 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?
Should repayment of claimant's PUA overpayment be waived?
Should repayment of claimant's FPUC overpayment be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for regular unemployment insurance benefits effective April 12, 2020. Claimant received PUA benefits in the gross amount of \$1,171.00. Claimant received FPUC benefits in the gross amount of \$4,200.00.

In decisions dated December 28, 2022, (references 01 and 02), Iowa Workforce Development (IWD) determined claimant was overpaid PUA benefits due to underreported or unreported wages earned with an employer, which also rendered him ineligible for FPUC benefits for those weeks. Thereafter, claimant was determined to be overpaid PUA benefits in the amount of \$765.00 and FPUC benefits in the amount of \$3,000.00. Claimant filed an application for waiver of repayment of those overpayments.

PUA and FPUC benefits were initially paid to claimant because no initial determination had yet been made finding him ineligible for benefits. Claimant believes there was some confusion regarding the wages the agency determined he should have reported. He was paid in the form of W2 wages from a contractor for which his company performed janitorial work, but that was because the contractor had to pay him from its PPP loan funds. Claimant did not believe that these constituted wages paid to him, and he did not report them as wages on his weekly claim for unemployment benefits. Claimant was truthful in his application for benefits and in his weekly claims throughout the time in which he claimed unemployment benefits. Claimant reported wages accurately to the best of his ability and understanding.

Claimant used the benefits to pay for living expenses for himself and his family—he resides with a spouse and three minor children. Claimant’s monthly income is used almost entirely to care for his home and family. His spouse recently took a job in order to assist with the family’s income, but the job is very new. At the end of the month, claimant has little disposable income remaining with which he could pay on the overpaid amount due to monthly expenses and due to IRS penalties, that also sprang from the COVID-19 pandemic. Claimant has no savings with which to repay the overpayment.

The administrative record indicates that, of the PUA and FPUC benefits paid out to claimant, \$406.00 in PUA, and \$1,200.00 in FPUC benefits have already been waived. These amounts were determined to be the result of agency error.

An unemployment insurance decision was mailed to claimant’s last known address of record on March 23, 2023. He did not know precisely when he received the decision. However, he believed he received the decision after the deadline for appeal, which was April 3, 2023. Claimant submitted an appeal of the decision on April 8, 2023. He believed he received the decision the day before he submitted the appeal—April 7, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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.

Public Law 116-136, Section 2104 of the CARES Act created a program in which an additional \$600.00 per week was payable to claimants who were eligible for at least \$1.00 per week in benefits stemming from other programs including regular unemployment insurance funded by the State of Iowa, Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance, Iowa Extended benefits, and Trade Act benefits. This initial program ran from March 29, 2020, through July 25, 2020. Claimants were only eligible to receive FPUC payments if they were entitled to receive benefits from another applicable program. The payments of FPUC benefits were automatic so long as a claimant was determined to be eligible under one of the other applicable programs.

On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, which includes Division N, Title II, Subtitle A, the Continued Assistance Act. Section 203 reauthorized the FPUC program for weeks of unemployment beginning after December 26, 2020, and ending on or before March 14, 2021, and modified the weekly supplement payment to \$300.00. On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (ARPA). Section 9103 of ARPA amends Section 2104 of the CARES Act of 2020 and extended the FPUC program for weeks of unemployment ending on or before September 6, 2021.

On May 11, 2021, Governor Reynolds announced that Iowa would end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for FPUC benefits in Iowa was the week ending June 12, 2021.

The CARES Act provides that a State agency may waive repayment of an overpayment in certain circumstances.

Public Law 116-136, Section 2104 was ultimately codified as 15 USC § 9023. 15 USC § 9023(f) provides:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(f) Fraud and Overpayments. –

- (1) In general. – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual –
 - (A) Shall be ineligible for further Federal Pandemic Unemployment Compensation in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and
 - (B) Shall be subject to prosecution under section 1001 of title 18, United States Code.
- (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 amount of such Federal Pandemic Unemployment Compensation to the State agency, except that the State agency may waive such repayment if it determines that –
 - (A) the payment of such Federal Pandemic 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 CARES Act also provides for waiver of PUA overpayments.

(4) WAIVER AUTHORITY

In the case of individuals who have received amounts of pandemic unemployment assistance to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic unemployment assistance to the State agency, except that the State agency may waive such repayment if it determines that –

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

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

15 USC § 9021(d)(4).

In order to receive a waiver of PUA or FPUC, the overpayment must be without fault on the part of the claimant and that repayment would be contrary to equity and good conscience. Factors in determining whether the overpayment was made without fault on the part of the claimant include: (1) whether the individual made a representation in connection with the claim for benefits that resulted in or contributed to the overpayment, and whether the individual knew or should have known that the representation inaccurate; (2) whether the individual failed, or caused another person to fail, to disclose a fact in connection with the individual that resulted in or contributed to the overpayment, and whether the individual knew or should have known that the fact was significant; (3) whether the individual accepted the funds and knew, or should have known that he or she was not entitled to the payment or that the payment amount was incorrect; and (4) whether, for any other reason, the overpayment amount resulted directly or indirectly, and partially or totally, from any act or omission of the individual which was erroneous, inaccurate, or otherwise wrong. *Cf.* Iowa Admin. Code r. 871—24.50 (waiver guidance for overpayments of temporary extended unemployment compensation).

In determining whether repayment would be against equity and good conscience, the administrative law judge considers the following factors: (1) whether the individual acted in reliance on the overpayment and gave up a benefit because of the overpayment or changed their position for the worse; and (2) whether repayment would cause undue hardship for the claimant. Other factors that may be considered include whether the overpayment was the result of a decision on appeal, and whether the claimant had notice from the agency that they may be required to repay an overpayment in the event of a reversal of the eligibility determination on appeal. *Id.*; *see also* UIPL No. 20-21(4)(d) (waiver guidance for overpayments of federal pandemic unemployment benefits).

The claimant was initially paid each of the overpaid benefits due to their initial eligibility for unemployment insurance benefits; however, the claimant was later determined to be ineligible for those benefits. Claimant made no material misstatements or misrepresentations when filing for benefits. Any such misstatements were due to misunderstanding, not due to intentional misrepresentation. Claimant did not know or should not have known that they would be denied benefits at a later date. The overpayment was not a direct result of any knowing actions or omissions of the claimant. As such, the payment of PUA and FPUC benefits was without fault on the part of the claimant.

Further, based upon the claimant's financial circumstances, recovery of the overpayment would cause a financial hardship to the claimant. The household income is used nearly entirely to cover necessary living expenses. Accordingly, recovery of an overpayment for which claimant was not a fault would be contrary to equity and good conscience.

As such, the claimant's remaining overpayment amount of \$765.00 in PUA benefits and \$3,000.00 in FPUC benefits shall be waived and claimant has no obligation to pay back those PUA or FPUC benefits received.

DECISION:

The claimant's appeal is accepted as timely. The March 23, 2023, (reference 03) unemployment insurance decision is MODIFIED IN FAVOR OF THE APPELLANT. Claimant's remaining PUA overpayment in the amount of \$765.00 is waived. Claimant's remaining overpayment of FPUC in the amount of \$3,000.00 is waived. The claimant is not obligated to pay back the PUA or FPUC benefits received.



Alexis D. Rowe
Administrative Law Judge

April 26, 2023
Decision Dated and Mailed

ar/scn

APPEAL RIGHTS. If you disagree with the 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.