

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON C KRUSE
Claimant

APPEAL 21A-UI-12192-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/26/20
Claimant: Appellant (1)

PL 116-136, Sec. 2102 – Federal Pandemic Unemployment Assistance
20 CFR 625 – Disaster Unemployment Assistance
Iowa Code § 96.3(7) - Overpayment
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On May 10, 2021, Brandon Kruse (claimant/appellant) filed an appeal from the January 29, 2021 (reference 06) unemployment insurance decision that determined claimant was overpaid Pandemic Unemployment Assistance (PUA) in the amount of \$7,215.00 for the 15-week period ending October 3, 2020, due to agency error and claimant having an active Florida claim.

A telephone hearing was held on July 26, 2021. The parties were properly notified of the hearing. Claimant participated personally. Claimant's mother, Michele Kruse, participated as a witness. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant eligible for PUA?
- II. Was the claimant overpaid PUA?
- III. Is the appeal timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant was denied regular benefits in Iowa and applied for PUA on August 6, 2020. Around the end of August 2020, after not hearing back on his PUA application for some time, he filed a claim for regular benefits in Florida. Claimant was allowed benefits in Florida from the benefit week ending May 23, 2020 through the benefit week ending October 17, 2020. Claimant stopped filing weekly claims for benefits around that time.

Claimant was subsequently allowed PUA in Iowa from the benefit week ending May 2, 2020 and continuing through the benefit week ending January 30, 2021. Claimant received PUA in the amount of \$481.00 per week for a total of 15 weeks, from the benefit week ending June 27, 2020 and continuing through the benefit week ending October 3, 2020. The total amount of PUA paid

during that period is \$7,215.00. Claimant had no intention of misleading or defrauding any party and was simply confused as to where to apply and what for.

The Unemployment Insurance Decision was mailed to claimant at the above address on January 29, 2021. That was claimant's correct address at that time. Claimant received the decision in early February 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 8, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant did file an appeal on February 5, 2021. However, the Appeals Bureau did not set up an appeal on that issue. It instead set hearings on claimant's disqualification from regular, state unemployment insurance benefits and related overpayments. Claimant was unaware this was the case until after the hearing on those matters. He therefore appealed again at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The administrative law judges further finds claimant was not eligible for PUA during the weeks paid. The January 29, 2021 (reference 06) unemployment insurance decision that determined claimant was overpaid Pandemic Unemployment Assistance (PUA) in the amount of \$7,215.00 is therefore AFFIRMED.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877,

881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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 administrative law judge finds claimant did appeal in a timely manner. Any delay was due to agency error or misinformation. As such the administrative law judge has jurisdiction to address the underlying issues.

Public Law 116-136, Sec. 2102 provides for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending on or before December 31, 2020, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19. That period was subsequently extended through the week ending September 4, 2021. See American Rescue Plan Act of 2021.

Claims filed on or before December 27, 2020 can be backdated to January 27, 2020; claims after that time can generally only be backdated to December 1, 2020. However, if an individual filed a regular UI claim on or before December 27, 2020, and the state later determined that the individual is not eligible for regular UI, the state should use the date the claimant filed the regular UI claim as the date of filing for the PUA claim. See Unemployment Insurance Program Letter No. 16-20, Change 4.

The issue to be determined here is whether claimant is a “covered individual” within the meaning of applicable law.

(3) COVERED INDIVIDUAL.—The term “covered individual”—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and

(ii) provides self-certification that the individual—

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

(aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(bb) a member of the individual’s household has been diagnosed with COVID–19;

(cc) the individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID–19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19;

(ii) the individual has to quit his or her job as a direct result of COVID–19;

(jj) the individual’s place of employment is closed as a direct result of the COVID–19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

(ll) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (l); and

(B) does not include—

- (i) an individual who has the ability to telework with pay; or
- (ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

In order to be eligible for PUA a claimant has to not be eligible for other forms of benefits, including regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation. Claimant was eligible for regular benefits in Florida during the relevant timeframe. He is therefore not eligible for PUA during that period.

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because claimant was not eligible for PUA but received PUA in the amount of \$7,215.00 he has been overpaid in this amount. The administrative law judge finds claimant had no intention of misleading or defrauding any party and was simply confused as to where to apply and what for. Therefore, no penalty shall be imposed. However, while the administrative law judge is sympathetic to claimant's situation, he is still responsible for repaying the above amount. There is no exception in the law for an overpayment in this instance, even where - as here - claimant acted in good faith and was not otherwise at fault.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The administrative law judges further finds claimant was not eligible for PUA during the weeks paid. The January 29, 2021 (reference 06) unemployment insurance decision that determined claimant was overpaid Pandemic Unemployment Assistance (PUA) in the amount of \$7,215.00 is therefore AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 30, 2021
Decision Dated and Mailed

abd/mh