

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

SOMA TAWR
Claimant

APPEAL NO: 22A-UI-13739-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/03/20
Claimant: Appellant (6)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.11(16) - Reimbursement of setoff costs
Iowa Code § 8A.504 - Offset of State Income Tax Refund Procedure
Iowa Admin. Code r. 871-25.16 - State Payment Offset

STATEMENT OF THE CASE:

On June 9, 2022, Ms. Soma Tawr, claimant/appellant, appealed the May 5, 2022, (reference 04) decision which notified the claimant her Iowa income tax refund was going to be withheld to apply to her overpayment of unemployment insurance benefits which the claimant owed to Iowa Workforce Development (IWD). After due notice was issued to claimant, a hearing was scheduled to be held by telephone conference call on July 22, 2022, at 11:00AM. Claimant personally participated. The department did not participate. Judicial notice was taken of the administrative record, NMRO, and KLOG.

ISSUES:

Is the appeal timely?

Was the claimant overpaid benefits?

Whether the withholding of the Iowa income tax refund to recover the prior overpayment is valid?

FINDINGS OF FACT:

Having heard the testimony and considered the evidence in the record, the undersigned finds:

Claimant's appeal is dated June 9, 2022. To be timely, the appeal needed to be filed on or before May 16, 2022 (the first non-holiday, weekday, that is ten days after the decision was mailed). The decision was mailed to claimant's current address on May 5, 2022, which she has not updated with Iowa Workforce Development (IWD). Claimant advises she only checks her mail on Saturdays and recalls getting the decision on May 14, 2022. Claimant advised the reason for waiting until June 9, 2022, to submit her appeal was she just put it off and there was no particular reason for the delay.

NMRO shows there were decisions reference (02 and 03) regarding overpayment of \$1,818.00 in regular unemployment benefits and \$7,200.00 in FPUC benefits. Claimant testified she

appealed the decisions, received notices of the July 23, 2021, appeal hearings, but was unable to participate. The overpayment decisions were kept in place on dismissals by default in 21A-UI-12163-LJ-T and 21A-UI-12164-LJ-T. Claimant was aware of this and did not appeal the overpayment decisions. The overpayment decisions remain in place and have become final agency action. Claimant has an Iowa income tax coming to her and advised that she has not received it as of the time of the hearing.

Claimant does not believe she filed for a waiver and KLOG shows no record of a waiver.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not timely under the two possible scenarios in this matter.

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:

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. 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).

Claimant received the decision sometime on May 14, 2022. Claimant received the decision before the appeal deadline (the deadline is 05/16/22) and, therefore, had an opportunity to file an appeal prior to the deadline. Claimant's delay 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. She says she simply did not get around to doing the appeal until June 9, 2022. This is not a good cause reason. Claimant's appeal is not timely filed and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant owes IWD for benefits she received to which she was not entitled. She has an Iowa income tax refund this year. Therefore, IWD is legally authorized to withhold the Iowa income tax refund for what is currently owed, to the extent that her refund is still there to be withheld.

This decision determines you have been overpaid FPUC benefits under the CARES Act. If you disagree with this decision, you may file an appeal by following the instructions set forth at the end of this decision. Additionally, instructions for requesting a **waiver** of the CARES Act overpayments 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.

Claimant is using both a somewhat new permanent address (apartment) and a former address that is her parent's current address. Claimant was instructed to update her address by contacting Iowa Workforce Development customer service at 1-866-239-0843 or via e-mail at uiclaimshelp@iwd.iowa.gov as soon as possible so that it can be updated system wide.

DECISION:

The May 5, 2022, (reference 04) unemployment insurance decision which notified claimant her lowa income tax refund was going to be withheld to apply to her overpayment of unemployment insurance benefits remains in effect and the appeal is **DISMISSED** as the appeal was untimely filed. IWD has legal authority to withhold the lowa income tax refund for benefits for overpayment balance.



Darrin T. Hamilton
Administrative Law Judge

November 30, 2022
Decision Dated and Mailed

mh

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 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.