

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARNA B CHOTKUACH
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-02636-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code §96.6(2) – Timely Appeal
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Marna B Chotkuach, the claimant/appellant, filed an appeal from the September 15, 2021, (reference 07) unemployment insurance (UI) decision that concluded she was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$1,800.00. The parties were properly notified about the hearing. A telephone hearing was held on February 23, 2022. Ms. Chotkuach participated and testified. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Chotkuach's appeal filed on time?
Has Ms. Chotkuach been overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Chotkuach at the correct address on September 15, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by September 25, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. September 25, 2021 was a Saturday; therefore, the deadline was extended to Monday, September 27, 2021.

Ms. Chotkuach received the decision in the mail. Ms. Chotkuach was stressed by the decisions because she thought the issued was resolved in 2020. Ms. Chotkuach had previously called IWD and learned that a company in California had reported paying her wages. Ms. Chotkuach contacted the company and they told Ms. Chotkuach that they had transposed some of the numbers of one of their employee's social security number and mistakenly reported that they had paid Ms. Chotkuach and not their actual employee. The company told Ms. Chotkuach that they would correct the issue. The company later told Ms. Chotkuach that they had filed a corrected W-2 for their employee. Ms. Chotkuach assumed the issue was resolved.

Ms. Chotkuach received more statements from IWD about the overpayments. Ms. Chotkuach called IWD to ask about her options. The IWD representative told Ms. Chotkuach that she could appeal the overpayment decision. Ms. Chotkuach filed an appeal via email on December 29, 2021. The appeal was received by Iowa Workforce Development on December 29, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Chotkuach's appeal of the reference 07 decision was not filed on time.

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).

Ms. Chotkuach received the reference 07 decision before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Chotkuach's delay in filing her appeal 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 in filing her appeal before the deadline. Ms. Chotkuach's appeal of the reference 07 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Chotkuach's appeal of the reference 07 decision was not filed on time. The September 15, 2021, (reference 07) decision is affirmed.



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

March 11, 2022
Decision Dated and Mailed

dz/mh

NOTE TO MS. CHOTKUACH:

- This decision determines you have been overpaid FPUC benefits. 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.
- **You may also request a waiver of this overpayment 1) by filing an appeal to the EAB, 2) applying for a waiver online, or 3) applying for a waiver in writing by mail.**
- Information and instructions on filing an appeal with the EAB are on the first page of this decision.
- The **online request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written request** must include the following information:
 - Your name & address.
 - Decision number/date of decision.
 - Dollar amount of overpayment requested for waiver.
 - Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.