

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD A ARMSTRONG
Claimant

APPEAL 24A-UI-03540-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/21/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Richard A. Armstrong, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) September 14, 2021, (reference 05) unemployment insurance (UI) decision. IWD concluded that IWD overpaid Mr. Armstrong Federal Pandemic Unemployment Compensation (FPUC) benefits in the total gross amount of \$1,200.00 for 4 weeks between March 21, 2021 and April 17, 2021 because the September 14, 2021 (reference 04) UI decision denied Mr. Armstrong UI benefits. On April 9, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Armstrong, and Craig A. Long, Mr. Armstrong's non-attorney representative, for a telephone hearing scheduled for April 24, 2024.

The administrative law judge held a telephone hearing on April 24, 2024. The administrative law judge heard Appeals 24A-UI-03538-DZ-T, 24A-UI-03539-DZ-T, and 24A-UI-03540-DZ-T together and created one hearing record. Mr. Armstrong participated in the hearing personally. Mr. Long participated in the hearing as a witness for Mr. Armstrong. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

The administrative law judge concludes Mr. Armstrong did not appeal the reference 05 UI decision on time so the decision finding that IWD overpaid him \$1,200.00 in FPUC benefits stays in place.

ISSUES:

Did Mr. Armstrong appeal on time?
Did IWD overpay Mr. Armstrong FPUC benefits in the total gross amount of \$1,200.00 for 4 weeks between March 21, 2021 and April 17, 2021?

¹ Claimant is the person who filed for UI benefits. Appellant is the person or employer who filed the appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the September 14, 2021 (reference 05) UI decision to Mr. Armstrong at his correct mailing address. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Friday, September 24, 2021.

The same day, IWD mailed Mr. Armstrong another UI decision. In the reference 04 UI decision, IWD concluded that IWD overpaid Mr. Armstrong REGULAR (state) UI benefits in the total gross amount of \$383.00 for 4 weeks between March 21, 2021 and April 17, 2021 because the June 8, 2021 (reference 02) UI decision denied Mr. Armstrong UI benefits based on how his job ended with employer United Parcel Service. The appeal deadline in this decision was also Friday, September 24, 2021.

Mr. Armstrong received the decisions in the mail. Mr. Armstrong contacted IWD, but he doesn't remember the specifics of the conversation. Mr. Armstrong did not appeal at this time.

Mr. Armstrong kept getting letters from IWD saying he owed IWD money. On March 15, 2024, Mr. Armstrong received a letter from the Iowa Department of Revenue (IDOR). The IDOR letter told Mr. Armstrong that IDOR was taking his state tax refund for tax year 2023 to pay off a debt he owed to IWD. The letter also told Mr. Armstrong that he could appeal the IDOR decision to IDOR.

Mr. Armstrong appealed the reference 05 UI decision online on April 4, 2024. The DIAL, UI Appeals Bureau received Mr. Armstrong's appeal the same day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Armstrong did not appeal the September 14, 2021, (reference 05) UI decision on time.

Iowa Code § 96.6(2) provides, in relevant 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:

2. 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:
 - (2) 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.² Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.³

Mr. Armstrong received the September 14, 2021 (reference 05) UI decision before the appeal deadline and, therefore, could have appealed by the deadline. The notice provision of the decision was valid. Mr. Armstrong's delay in appealing was not due to an error or misinformation from IWD or due to delay or other action of the United States Postal Service. Mr. Armstrong has not established any other good cause reason for his delay in appealing. Mr. Armstrong did not appeal the September 14, 2021 (reference 05) UI decision on time, so the administrative law judge does not have jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Mr. Armstrong did not appeal the September 14, 2021 (reference 05) UI decision on time. The September 14, 2021 (reference 05) UI decision that concluded IWD overpaid Mr. Armstrong \$1,200.00 in FPUC benefits is AFFIRMED.



Daniel Zeno
Administrative Law Judge

April 26, 2024
Decision Dated and Mailed

scn

² *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *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).

NOTE TO MR. ARMSTRONG RE: OVERPAYMENT AMOUNT

- As of April 24, 2024, IWD records show the total overpayment amount is \$1,442.92.
- \$1,200.00 of the overpayment is for Federal Pandemic Unemployment Compensation (FPUC) benefits. These are federal COVID-19 benefits.
- \$242.92 of the overpayment is REGULAR (state) UI benefits.
 - This overpayment was originally \$383.00.
 - The Iowa Department of Revenue took your \$140.08 state tax refund for tax year 2023 and sent it to IWD.
 - This reduced this overpayment to \$242.92 (\$383.00 - \$140.08 = \$242.92)

NOTE TO MR. ARMSTRONG RE: FPUC OVERPAYMENT:

- You may request a waiver of the \$1,200.00 FPUC overpayment by:
 - applying for a waiver from IWD online, or
 - applying for a waiver from IWD in writing by mail.
- The online waiver request form is available on the Iowa Workforce Development website at: <https://workforce.iowa.gov/unemployment/resources/federal-overpayment-recovery>
- The written waiver request must include the following information:
 - Your name & address.
 - The Decision date and decision number.
 - Your decision date and number is September 14, 2021 (reference 05).
 - Dollar amount you are requesting IWD waive.
 - Relevant facts that you feel would justify a waiver.
- The written waiver request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319

- To check on your waiver application call 888-848-7442 or email iwduiatax@iwdiowa.gov
- If IWD denies your waiver application, you have the right to appeal the denial decision.
- If the FPUC overpayment is not waived, you will have to pay back IWD the FPUC benefits you received.
- The waiver does not apply to the \$242.92 REGULAR (state) UI benefits overpayment.

APPEAL RIGHTS. If you disagree with this 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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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.