

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CODY S (NELSON) EPPTING
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-04536-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/05/20
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 1, 2022, (reference 04) unemployment insurance decision that concluded he was overpaid \$6,600.00 in unemployment insurance benefits. After proper notice, a telephone hearing was conducted on April 28, 2022. The hearing was held together with Appeal 22A-UI-04535-JC-T. The claimant participated. Official notice of the administrative records was taken. Department Exhibit 1 was admitted.

To update your name on record, please call 866-239-0843 or send an email to uicclaimshelp@iwd.iowa.gov

ISSUES:

Is the appeal timely?

Has the claimant been overpaid any unemployment insurance benefits?

Is the claimant overpaid Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of April 5, 2020.

The claimant filed for and received a total of \$1,199.00 in regular, state unemployment insurance benefits for the weeks between April 15, 2020 and June 20, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$6,600.00 in federal benefits for the period of April 15, 2020 and June 20, 2020.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 20A-UI-07995-AD-T.

An initial decision (reference 04) was mailed to the claimant/appellant's address of record on February 1, 2022. The decision contained a warning that an appeal must be filed by February 11, 2022. The decision also directed the appellant to call the customer service line for assistance. Claimant did not contact the customer service line and was given incorrect advice, which led to his delay in filing the appeal. Claimant filed his appeal on February 14, 2022.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The undisputed evidence is claimant's appeal was delayed *due to an Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue in this case is whether the claimant was overpaid FPUC benefits.

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.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(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 amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). The claimant was overpaid \$6,600.00 in Federal Pandemic Unemployment Compensation (FPUC).

This decision determines you are overpaid benefits, and the administrative law judge lacks authority to waive the overpayment. 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.

Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

DECISION:

The unemployment insurance decision dated February 1, 2022, (reference 04), is affirmed. The claimant was overpaid \$6,600.00 in Federal Pandemic Unemployment Compensation (FPUC).



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

May 11, 2022

Decision Dated and Mailed

jlb/ac

Note to Claimant:

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>