

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

DONALD J QUICK
Claimant

APPEAL 22A-UI-10938-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/28/20
Claimant: Appellant (6R)

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

STATEMENT OF THE CASE:

On April 29, 2022, Mr. Donald Quick, claimant/appellant, filed an appeal from the August 23, 2021, (reference 03) unemployment insurance decision finding claimant was overpaid \$3,300.00 in FPUC benefits for the 11-week period ending 06/12/21 due to the decision (reference 01) finding claimant not eligible for PEUC benefits in Iowa effective 03/28/21 due to the record reflecting claimant would be monetarily eligible for regular unemployment benefits in Texas or Colorado. Notices of hearing were mailed to claimant's last known addresses of record for a telephone hearing scheduled for June 15, 2022, at 1:05PM. Claimant requested and was granted a continuance, with a notice of hearing being mailed to claimant's last known addresses of record for a telephone hearing rescheduled for June 30, 2022, at 1:10PM. The department did not participate. Claimant participated through his designated party representative, Mrs. Lynette Quick, his spouse. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-10935-DH-T; 22A-UI-10936-DH-T; and 22A-UI-10938-DH-T. Judicial notice was taken of the administrative record, DBIN, and KPYX.

ISSUES:

Is claimant's appeal timely?
Is claimant overpaid FPUC benefits?

FINDINGS OF FACT:

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

Claimant's appeal is dated April 29, 2022. To be timely, the appeal needed to be filed on or before September 2, 2021 (first nonholiday weekday ten days from mailing date). The decision was mailed to claimant's last known addresses on August 23, 2021. Claimant took a position based out of Colorado June 10, 2021. Claimant and spouse moved to be closer to claimant's job, with the plan to be returning to their home in Texas every 4-6 weeks to look after their home and pick up their mail. Claimant got the decision, when he and his spouse/party representative were at their place in Texas on September 3, 2021. The party representative advised that the reason for not filing until April 29, 2022, was due to efforts to gather information on this matter, attempting to

file for unemployment in Texas, claimant's work schedule getting in the way, believing that claimant was getting a job that had been waiting on and finally being told in August 2021 it would be starting in September 2021, then starting in October 2021, and then starting in December 2021. Learning in February 2022 that permitting had not gone through and in March 2022, moving temporarily to Montana from temporarily living in Colorado. There were health issues (spouse surgery and minor child's COVID-19 hospitalization) and the need to filing income taxes by the deadlines in 2022.

In companion case 22A-UI-10935-DH-T, the decision that found claimant was disqualified from PEUC benefits in Iowa effective 03/28/21 due to being eligible for benefits in Texas or Colorado was kept in place as the appeal was untimely filed.

Claimant filed for unemployment with an original claim date of June 28, 2020. Claimant filed for and received \$5,211.00 in PEUC benefits for the 11-week period ending 06/12/21. Claimant, through his party representative did not deny this nor the accuracy of the records found in DBIN.

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.

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 August 23, 2021, decision on September 3, 2021. 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. 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).

The record shows that the appellant did not timely receive the decision until September 3, 2021, which is after the September 2, 2021, deadline. Setting aside for the moment the issue that claimant last checked his mail at his Texas address on August 5, 2021, and then next checked it on September 3, 2021, the appeal was not filed until April 29, 2022, which means claimant waited almost 8 months to file his appeal after finding the decision in the mail.

The administrative law judge concludes that his failure to file a timely appeal after receiving notice of the decision was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

A good cause reason was not established for the delay. While a number of events intervened between the receipt of the decision and the appeal, claimant did pursue filing in Texas and made calls regarding Iowa benefits but did not get around to appealing until almost 8 months after receiving the decision. The appeal was submitted untimely. The administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

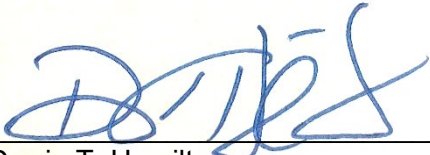
Claimant's party representative advised claimant was aware of the right to apply for a waiver and did not believe a waiver had been applied for as he believed he would not qualify. The undersigned does not see it noted whether a waive has been applied for, but that does not mean one has not been sought. This matter is remanded to the Benefits Bureau as below directed.

DECISION:

The August 23, 2021, (reference 03) unemployment insurance decision that found claimant overpaid \$3,300.00 in FPUC benefits remains in effect as the appeal in this case was not timely, and the appeal is **DISMISSED**.

REMAND:

This matter is remanded to the Benefits Bureau for determination whether there exists a pending waiver application that has not been ruled upon and if there is, then for a decision with appeal rights on said pending waiver application of claimant.



Darrin T. Hamilton
Administrative Law Judge

October 19, 2022
Decision Dated and Mailed

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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 perminate address (in Texas) and a current address (post office box in Montana). Should the information provided need updated by changing, replacing, or eliminating one or both of the addresses, claimant should so advise either by direct contact with IWD customer service at 1-866-239-0843 or via e-mail at uicclaimshelp@iwd.iowa.gov as soon as possible.

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.