

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHANNA V GLAZIER
Claimant

APPEAL NO. 22A-UI-02200-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 02/23/20
Claimant: Appellant (1)

Public 116-136, §2104 – Federal Pandemic Unemployment Compensation
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Johanna Glazier, filed a December 28, 2022 late appeal from the December 16, 2021, reference 02, decision that held she was overpaid \$2,400.00 in Federal Pandemic Unemployment Compensation for the two weeks between June 28, 2020 and July 11, 2020, based on an Agency determination that she was paid FPUC benefits four times for the week ending July 4, 2020 and twice for the week ending July 11, 2020. After due notice was issued, a hearing was held on February 16, 2022. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-02198-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KPY1, KPYX, the December 16, 2021 PUA and FPUC overpayment decisions, and the Claim Detail reflecting the PUA allowance.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether the claimant was overpaid \$2,400.00 in Federal Pandemic Unemployment Compensation for the two weeks between June 28, 2020 and July 11, 2020, based on an Agency determination that she was paid FPUC benefits four times for the week ending July 4, 2020 and twice for the week ending July 11, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

On December 16, 2021, Iowa Workforce Development mailed two overpayment decisions to the claimant's Cedar Rapids last-known address of record. One of those decisions held the claimant was overpaid \$812.00 in Pandemic Unemployment Assistance (PUA) for the two weeks between June 28, 2020 and July 11, 2020, based on an Agency determination that she was paid PUA benefits four times for the week ending July 4, 2020 and twice for the week ending July 11, 2020. The other overpayment decision held the claimant was overpaid

\$2,400.00 in Federal Pandemic Unemployment Compensation (FPUC) for the two weeks between June 28, 2020 and July 11, 2020, based on an Agency determination that she was paid FPUC benefits four times for the week ending July 4, 2020 and twice for the week ending July 11, 2020. Each overpayment decision stated that the decision would become final unless an appeal was postmarked by December 16, 2021 or was received by the Appeals Section by that date. Each decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. December 26, 2021 was a Sunday and the next working day was Monday, December 27, 2021. The claimant did not receive either decision in a timely manner. The United States Postal Service delivered the decisions to the claimant's neighbor. The claimant learned about and received the decisions on the evening of December 26, 2021, when her neighbor knocked on her door and provided the decisions to the claimant. The claimant worked into the night to draft an online appeal, but did not complete and transmit the appeal until 1:22 a.m. on the December 28, 2021. The Appeals Bureau received the appeal on December 28, 2021 and treated it as also a late appeal from both overpayment decisions.

The claimant established an original claim for benefits that was effective February 23, 2020. Iowa Workforce Development approved the claimant for \$203.00 in weekly Pandemic Unemployment Assistance (PUA) benefits for the period beginning April 5, 2020, provided the claimant was otherwise eligible. IWD also approved the claimant for \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) that were based on the PUA eligibility.

The claimant received benefits that included FPUC benefits for the weeks ending July 4, 2020 and July 11, 2020. On July 9, 2020, IWD paid the claimant \$600.00 in FPUC benefits for the week that ended July 4, 2020. On July 10, 2020, IWD made a second, erroneous and duplicative \$600.00 payment of FPUC benefits for the week that ended July 4, 2020. On July 14, 2020, IWD paid the claimant \$1,200 in FPUC benefits for the two-week period ending July 11, 2020. This payment included a second erroneous and duplicative \$600.00 payment of FPUC for the week that ended July 4, 2020. On July 16, 2020, IWD again paid the claimant \$1,200.00 in FPUC benefits for the two-week period ending July 11, 2020. This payment included a third erroneous and duplicative \$600.00 FPUC payment for the week that ended July 4, 2020, as well as an erroneous and duplicative \$600.00 FPUC payment for the week that ended July 11, 2020. The claimant received each of the payments in question via a debit card issued for the purpose of receiving unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving

section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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).

There is good cause to treat the claimant December 28, 2021 late appeal as a timely appeal. The claimant did not receive the overpayment decisions in a timely manner. Receipt of the decisions on the evening of December 27, 2021 did not provide the claimant a reasonable opportunity to file an appeal that same day. The claimant filed the appeal promptly, as soon as she was able. The good cause to treat the late appeal as a timely appeal is attributable to the United States Postal Service misdirecting the claimant's mail to her neighbor's address. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was timely, administrative law judge has jurisdiction to enter a ruling based on the merits 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).

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, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

(3) Recovery by state agency —

(A) In general.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice

thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

The evidence in the record establishes that the claimant was indeed overpaid \$2,400.00 in FPUC benefits for the two-week period between June 28, 2020 and July 11, 2020. This included three extra and duplicative \$600.00 FPUC payments for the week ending July 4, 2020 that totaled \$1,800.00 and one extra and duplicative \$600.00 FPUC payment for the week that ended July 11, 2020. The claimant must repay the overpaid FPUC benefits unless she applies for and is approved for waiver of repayment of FPUC benefits. See below.

DECISION:

The claimant's appeal from the December 16, 2021, reference 02, FPUC overpayment decision was timely. The decision is affirmed. The claimant was overpaid \$2,400.00 in FPUC benefits for the two-week period between June 28, 2020 and July 11, 2020. The claimant must repay the overpaid FPUC benefits unless she applies for and is approved for waiver of repayment of FPUC benefits. See below.



James E. Timberland
Administrative Law Judge

March 8, 2022
Decision Dated and Mailed

jet/kmj

Note to Claimant: This decision determines you have been overpaid FPUC under the CARES Act. 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>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.