

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GREGORIO AGUILAR
1508 NEW HAMPSHIRE ST
MUSCATINE IA 52761 1854**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-19215-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515)281-7191**

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:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.
That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITITaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GREGORIO AGUILAR
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-19215-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

PL 116-136, Sec. 2107 – Federal Pandemic Emergency Unemployment Compensation
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On August 31, 21, claimant/appellant appealed the August 2, 2021, (reference 03) decision that concluded the claimant was overpaid Federal Pandemic Emergency Unemployment Compensation (“PEUC”) benefits in the amount of \$2,600.00 for the five-week period ending August 29, 2020. A telephone hearing was scheduled to be held on October 22, 2021. The claimant requested a postponement. The parties were properly notified of the hearing. A hearing was held December 13, 2021. The hearing was held together with Appeals 21A-UI-19213-CS-T; 21A-UI-19214-CS-T; 21A-UI-19216-CS-T; and 21A-UI-19217-CS-T and created one record. The claimant was present at the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Was claimant’s appeal timely?

Is the claimant overpaid PEUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance decision was mailed to the claimant's last known address of record on August 3, 2021. Claimant’s wife received the decision within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 13, 2021. The appeal was not filed until August 31, 2021, which is after the date noticed on the unemployment insurance decision because claimant was incarcerated.

Claimant’s wife told him about the overpayment decisions and he directed her to appeal them for him.

Claimant filed for and has received PEUC benefits in the gross amount of \$2,600.00 for the five-week period ending August 29, 2020. On August 2, 2021, Iowa Workforce Development (IWD) issued a decision (reference 03) that found claimant was ineligible for PEUC benefits. That decision has been affirmed. See 21A-UI-19213-CS-T.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

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. Bd. 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any 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). 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The August 2, 2021, (reference 03) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 14, 2022
Decision Dated and Mailed

cs/scn