

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

MATTHEW D MCCARTNEY
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 22A-UI-15225-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code Section 96.6(2) – Timeliness of Appeal
P.L. 116-136, §2107 – Pandemic Emergency Unemployment Compensation Overpayment

STATEMENT OF THE CASE:

On July 18, 2022, Matthew McCartney (claimant) filed a late appeal from the March 21, 2022 (reference 01) decision that held he was overpaid \$505.00 in Pandemic Emergency Unemployment Compensation (PEUC) for two weeks between February 14, 2021 and March 13, 2021, based on the deputy's conclusion the claimant failed to report and/or incorrectly reported wages earned with Five T, Inc. After due notice was issued, a hearing was held on August 25, 2022. Claimant participated. There were three appeal numbers set for a consolidated hearing: 22A-UI-15224-JT-T, 22A-UI-15225-JT-T, and 22A-UI-15227-JT-T. Exhibit A, the claimant's emailed appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01, 02 and 03 decisions, the reference 01, 02 and 03 supplemental documents, DBRO, KPYX, KCCO and the quarterly wage reports (WAGEA, WAGEB, WAGEC).

The administrative law judge left hearing record open through August 26, 2022 for the limited purpose of allowing the claimant additional opportunity to submit any and all 2022 correspondence between the claimant and Iowa Workforce Development and documentation pertaining to any 2022 phone calls between the claimant and Iowa Workforce Development. The claimant did not provide the requested records. The solicited documentation was to include the overpayment statements mailed to the claimant in 2022. The claimant did not submit any of the requested materials. At 7:40 a.m. on August 26, 2022 the claimant submitted an email stating, inter alia: "Your honor I was not able to obtain my Verizon phone records in the 24 hr time frame we agreed upon. I understand I may have missed the timely window for appeal." The administrative law judge had not imposed a 24-hour deadline for submission of additional materials. At time the appeal hearing ended at 8:54 a.m. on August 25, 2022, the administrative law judge gave the claimant through the end of the day (11:59 p.m.) of August 26, 2022 to submit the solicited documentation. In other words, the claimant was effectively provided two days, August 25 and 26, to submit the solicited records. The claimant's August 26, 2022 correspondence also referenced an October 27, 2020 heart procedure and attached photos in reference to that procedure. The claimant's correspondence was received into evidence as Exhibit B.

Given the administrative law judge's stated willingness to consider the Overpayment Statements, the claimant agreement to provide the Overpayment Statements, and the claimant's failure to provide the Overpayment Statements, the administrative law judge requested those records from the IWD Collections personnel and took official notice of those records.

ISSUE:

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

FINDINGS OF FACT:

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

Matthew McCartney (claimant) established an original claim for benefits that was effective March 15, 2022 and an "additional claim" for benefits that was effective October 25, 2020. At the time the claimant established the original claim, he provided a Des Moines post office box as his mailing address. The claimant discontinued use of the post office box in February 2021 in connection with his move to a residence on Lacona Avenue in Des Moines. Though the claimant continued to receive unemployment insurance benefits into March 2021, the claimant did not update his mailing address with Iowa Workforce Development. In connection with the February 2021 move, the claimant requested the United States Postal Service forward his mail to the new Des Moines residence.

On March 21, 2022, Iowa Workforce Development mailed two overpayment decisions to the claimant's last-known address of record, the West Des Moines post box. The reference 01 decision held the claimant was overpaid \$505.00 in Pandemic Emergency Unemployment Compensation (PEUC) for two weeks between February 14, 2021 and March 13, 2021, based on the deputy's conclusion the claimant failed to report and/or incorrectly reported wages earned with Five T, Inc. The reference 02 decision held the claimant was overpaid \$300.00 in Federal Pandemic Unemployment Compensation (FPUC), based on the deputy's conclusion the claimant failed to report and/or incorrectly reported wages earned with Five T, Inc. The reference 01 and 02 decisions each stated the decision would become final unless an appeal was postmarked by March 31, 2022 or was received by the Appeals Section by that date. The weight of the evidence indicates the claimant received the reference 01 and 02 decisions in a timely manner, prior to the deadline for appeal. The claimant did not file an appeal from either decision by the March 31, 2022 appeal deadline.

On April 15, 2022, Iowa Workforce Development Benefits Collections mailed an Overpayment Statement of Amount Due to the claimant's post office box address of record. The Statement told the claimant he was overpaid \$300.00 in FPUC benefits and PEUC benefits totaling \$501.00 in connection with his March 15, 2020 original claim. The Statement solicited repayment of the benefits and provided IWD contact information.

On May 11, 2022, Iowa Workforce Development Benefits Collections mailed an Overpayment Statement of Amount Due to the claimant's post office box address of record. The Statement told the claimant he was overpaid benefits totaling \$805.00, which was the total amount of the overpayments referenced in the April 15, 2022 Overpayment Statement. The Statement solicited repayment of the benefits and provided IWD contact information.

On May 24, 2022, Iowa Workforce Development mailed the May 24, 2022 (reference 03) decision to the claimant last-known address of record, the West Des Moines post box. The

reference 03 decision held the claimant was overpaid \$1,392.00 in regular state benefits for three weeks between October 25, 2020 and November 14, 2020, based on the deputy's conclusion the claimant failed to report wages earned with Five T, Inc. The reference 03 decision stated the decision would become final unless an appeal was postmarked by June 3, 2022 or was received by the Appeals Section by that date. The weight of the evidence indicates the claimant received the reference 03 decision in a timely manner, prior to the deadline for appeal. The claimant did not file an appeal from the decision by the appeal deadline.

The claimant asserts he did not receive the reference 01, 02 or 03 decision close in time to the decision mailing date. The weight of the evidence indicates otherwise.

The claimant advises that he commenced receiving Overpayment Statements in late May or early June 2022. IWD records reflect instead that the Overpayment Statements were first mailed on April 15 and May 11, 2022, though others may have followed later.

Though the claimant asserts he contacted Iowa Workforce Development in response to receiving the Overpayment Statements, IWD records do not reflect contact prior to July 18, 2022.

On July 18, 2022, the claimant emailed an appeal to the Appeals Bureau via uiappealshelp@iwd.iowa.gov. The claimant wrote: "I would like to get the process started for my rebuttal for the \$2,197.00 for Iowa Workforce Development. What are the necessary documents / proof that os [sic] required?" The amount referenced in the claimant's email was the total for all three overpayment decisions. The Appeals Bureau received the claimant's email on July 18, 2022 and treated the email correspondence as an appeal from the reference 01, 02 and 03 overpayment decisions.

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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence in the record establishes an untimely appeal from the March 21, 2022 (reference 01) decision. The above findings of fact reflect the administrative law judge's determination that significant portions of the claimant's testimony were not credible. The

evidence establishes that the claimant received the reference 01 decision in a timely manner, had a reasonable opportunity to file an appeal by the appeal deadline, but unreasonably delayed filing the appeal to July 18, 2022. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the decision from which the claimant appeals in the present matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the March 21, 2022 (reference 01) decision was untimely. The decision that held the claimant was overpaid \$505.00 in Pandemic Emergency Unemployment Compensation (PEUC) for two weeks between February 14, 2021 and March 13, 2021,, based on the deputy's conclusion the claimant failed to report wages earned with Five T, Inc., remains in effect.



James E. Timberland
Administrative Law Judge

September 14, 2022
Decision Dated and Mailed

jt/jb

Note to Claimant: This decision determines you have been overpaid PEUC under the CARES Act. If you disagree with this decision, you may file an appeal by following the instructions on the final page of this decision. Additionally, instructions for requesting a waiver of this PEUC overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a PEUC waiver, you will have to repay the PEUC benefits in question.

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>.

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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.