

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JODIE L BRINKMANN
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 22A-UI-05575-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.3(7) – Overpayment

STATEMENT OF THE CASE:

On March 2, 2022, Jodie Brinkmann (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated February 8, 2022 (reference 09) that determined claimant was overpaid Federal Pandemic Unemployment Compensation in the amount of \$1,500.00 for five weeks between January 31 and March 6, 2021 based on a prior decision denying benefits.

A telephone hearing was held on April 13, 2022. The parties were properly notified of the hearing. Claimant participated personally. Claimant’s case worker, Dawn Walters, observed the hearing. Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on February 8, 2022. That was claimant’s correct address at that time. Claimant is unsure when she received the decision. Claimant delayed appealing for approximately a week after receiving the decision due to being busy.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 18, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on March 2, 2022.

A decision dated March 19, 2021 found claimant eligible for Pandemic Unemployment Assistance (PUA) effective January 10, 2021 in the amount of \$203.00 per week. The administrative record indicates PUA and related FPUC payments have not been issued to claimant for the period between January 31 and March 6, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated February 8, 2022 (reference 09) that determined claimant was overpaid Federal Pandemic Unemployment Compensation in the amount of \$1,500.00 for five weeks between January 31 and March 6, 2021 based on a prior decision denying benefits is therefore final and remains in force.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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.”

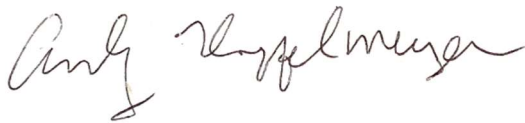
The administrative law judge finds claimant received the decision in a timely manner and had a reasonable opportunity to file a timely appeal. Claimant chose to prioritize other matters rather than filing an appeal. This is not a good cause reason for delay and the administrative law judge therefore finds the appeal untimely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated February 8, 2022 (reference 09) that determined claimant was overpaid Federal Pandemic Unemployment Compensation in the amount of \$1,500.00 for five weeks between January 31 and March 6, 2021 based on a prior decision denying benefits is therefore final and remains in force.

REMAND:

A decision dated March 19, 2021 found claimant eligible for Pandemic Unemployment Assistance (PUA) effective January 10, 2021 in the amount of \$203.00 per week. The administrative record indicates PUA and related FPUC payments have not been issued to claimant for the period between January 31 and March 6, 2021. This matter is remanded for issuance of those payments.



Andrew B. Duffelmeyer
Administrative Law Judge

April 15, 2022
Decision Dated and Mailed

abd/abd