

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TOTOYA KOKO
Claimant

APPEAL 20A-UI-04409-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/22/20
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Sec 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant/appellant, Totoya Koko, filed an appeal from the May 1, 2020 (reference 01) unemployment insurance decision that denied benefits based upon the claimant's failure to provide proof of citizenship or legal authorization to work in the United States. The claimant was properly notified about the hearing. A telephone hearing was held on June 9, 2020. The claimant participated personally. CTS Lang Link provided language interpretation services to the claimant. The administrative law judge took official notice of the administrative records. Claimant's Exhibit A was admitted into evidence.

ISSUE:

Did the claimant file a timely appeal?
Is the claimant overpaid benefits?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was issued on May 1, 2020 stating that the claimant was not eligible for unemployment insurance benefits because she failed to provide proof that she was a citizen or legally authorized to work in the United States. The deadline to file an appeal was on May 11, 2020. Claimant believes that she received the decision in the mail around May 6 or May 7, 2020. She does not read the English language. She did not believe that the decision impacted her negatively because she receives a lot of mail that requires no action. Eventually, she had a friend interpret the decision for her in Arabic. She then filed an appeal by mail on May 21, 2020.

The claimant established her claim with an effective date of March 22, 2020. The claimant is not a citizen, but has a permanent resident card. See Exhibit A. The claimant has received unemployment insurance benefits of \$1,220.00 from March 22, 2020 through April 25, 2020.

Claimant has also received Federal Pandemic Unemployment Compensation benefits of \$2,400.00 from March 29, 2020 through April 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant did not file a timely appeal.

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.

(emphasis added).

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).

While the administrative law judge is sympathetic to the fact that the claimant does not read English and must have another party interpret for her, claimant received the decision in the mail and did not immediately seek out anyone to interpret the decision in order to comply with the appeal deadline. Claimant's 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). As such, 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). Benefits are denied effective March 22, 2020.

Because benefits are denied, the issues of overpayment of regular benefits and Federal Pandemic Unemployment Compensation benefits must be addressed.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits of \$1,220.00 in unemployment insurance benefits for the weeks between March 22, 2020 and April 25, 2020 pursuant to Iowa Code § 96.3(7), as the disqualification decision that created the overpayment decision is affirmed.

The next issue is whether the claimant has also been overpaid Federal Pandemic Unemployment Compensation ("FPUC") benefits. The administrative law judges finds that she has been overpaid FPUC benefits.

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...

Here, the claimant is disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving FPUC benefits. In addition to the regular benefits claimant received, she also received an additional \$2,400.00 in FPUC benefits for the period from March 29, 2020 through April 25, 2020. Claimant is required to repay those benefits as well.

The issue of whether a claimant is able to and available for work is a weekly-determination. As such, whether the claimant has provided sufficient documentation in Exhibit A regarding her status to work in the United States will be remanded to the Benefits Bureau for an investigation and determination.

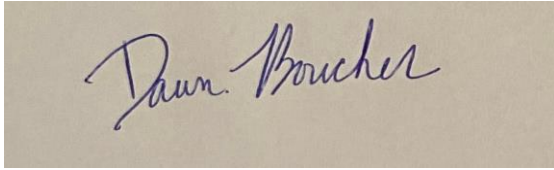
Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The claimant failed to file a timely appeal. The May 1, 2020 (reference 01) unemployment insurance decision is affirmed. Benefits are denied effective March 22, 2020. The claimant was overpaid \$1,220.00 in unemployment insurance benefits for the weeks between March 22, 2020 and April 25, 2020, which must be repaid. The claimant was also overpaid an additional \$2,400.00 in Federal Pandemic Unemployment Compensation benefits for the period from March 29, 2020 through April 25, 2020. Claimant is required to repay those benefits as well.

REMAND:

The issue of whether the claimant has provided sufficient proof that she is legally authorized to work in the United States in Exhibit A provided herein is remanded to the Benefits Bureau for an investigation.

A rectangular area containing a handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

June 24, 2020
Decision Dated and Mailed

db/sam