

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MALENA K DAVIS**  
Claimant

**APPEAL NO. 22A-UI-03000-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

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

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

**STATEMENT OF THE CASE:**

On January 7, 2022, Malena Davis (claimant) filed a late appeal from the October 4, 2021 (reference 02) decision that held the claimant was overpaid \$3,361.00 in PEUC benefits for a 15-week period ending May 20, 2021, due to the reference 01 decision that denied Pandemic Emergency Unemployment Compensation (PEUC) benefits effective November 29, 2020. After due notice was issued, a hearing was held on March 9, 2022. The claimant participated. There were three appeal numbers set for a consolidated hearing: 22A-UI-02999-JT-T, 22A-UI-03000-JT-T and 22A-UI-03001-JT-T. Exhibit A, the appeal memo and envelope, were received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01, 02 and 03 decisions, DBRO (record of regular and PEUC benefits paid, as well as wages reported by the claimant), KPYX (record of FPUC benefits paid), WAGE-A (quarterly wages reported by the claimant's Iowa employers), and IBIQ (quarterly wages claimant's Illinois employer reported to the Illinois Department of Employment Security).

**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:

On October 4 2021, Iowa Workforce Development mailed two overpayment decisions to the claimant. The reference 02 decision held the claimant was overpaid \$3,361.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits for a 15-week period ending May 20, 2021. The reference 03 decision held the claimant was overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for a 12-week period ending March 20, 2021. Both overpayment decisions were prompted by a reference 01 decision that denied PEUC benefits. Each overpayment decision stated that the decision would become final unless an appeal was postmarked by October 14, 2021 or was received by the Appeals Section by that date. The claimant received the two-overpayment decisions in a timely manner, prior to

the October 14, 2021 deadline for appeal. The claimant did not read the decisions in their entirety and did not note the appeal deadline. Each decision provided a customer service telephone number the claimant could call if she had questions about the decision. Each decision provided clear and concise instructions for filing an appeal online, by fax, by mail, or by email.

The claimant advises that she has difficulty understanding documents. The claimant advises she left school during her sophomore year, did not return to school, and did not complete a general education diploma (GED). The claimant's advises her husband also left school prior to graduation, but later earned a GED.

The claimant did not take steps to file an appeal from either overpayment decision by the October 14, 2021 appeal deadline. The claimant shared the overpayment decisions with her husband and then made a decision not to take further action.

In mid-November 2021, Iowa Workforce Development mailed an Overpayment Statement, a demand letter, to the claimant. In response to the Overpayment Statement, the claimant called an IWD benefits collections representative and entered into a tentative arrangement to repay benefits at a rate of \$50.00 a month. After the claimant subsequently spoke with her husband, the claimant again called an IWD benefits collections representative to indicate she was unable to enter into the repayment arrangement. At that time, the Agency representative referenced the claimant's right to appeal from the adverse decisions.

In January 2022, the claimant wrote a note on an December 14, 2021 Overpayment Statement and mailed the document to the Benefit Collections at Iowa Workforce Development. The correspondence was postmarked January 7, 2022. The Benefit Collections personnel forwarded the correspondence to the Appeals Bureau. The Appeals Bureau received the correspondence on January 13, 2022 and docketed a January 7, 2022 appeal from the reference 01, 02 and 03 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).

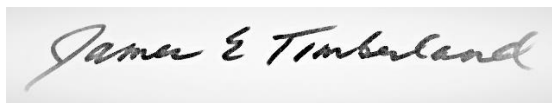
No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The claimant's appeal from the October 4, 2021 (reference 02) PEUC overpayment decision was untimely. The claimant received the decision in a timely manner. The claimant had a reasonable opportunity to file an appeal by the October 14, 2021 appeal deadline. The claimant unreasonably delayed filing an appeal until January 7, 2022. The late filing of the appeal was attributable to the claimant's inaction and delayed action. 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 October 4, 2021 (reference 02) PEUC overpayment decision was untimely. The decision that held the claimant was overpaid \$3,361.00 in PEUC benefits for a 15-week period ending May 20, 2021, due to the reference 01 decision that denied Pandemic Emergency Unemployment Compensation (PEUC) benefits effective November 29, 2020, remains in effect.

In the event this decision regarding timeliness of appeal is reversed in connection with a further appeal, there is enough evidence in the record for a decision on the substantive issue without need for further hearing.



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James E. Timberland  
Administrative Law Judge

March 24, 2022  
Decision Dated and Mailed

jet/jh

***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 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.