

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HAMIDOU BARRY
Claimant

APPEAL 22A-UI-01529-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 05/02/21
Claimant: Appellant (1R)**

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

STATEMENT OF THE CASE:

On December 18, 2021, Hamidou Barry (claimant/appellant) filed an appeal from the decision dated October 12, 2021 (reference 02) that determined claimant was overpaid unemployment insurance benefits in the amount of \$6,656.00 for 13 weeks between May 2 and July 31, 2021 based on a prior decision denying benefits.

A telephone hearing was held on February 9, 2022. The parties were properly notified of the hearing. Claimant participated personally and with the assistance of a French language interpreter. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the claimant overpaid benefits?
- II. Is the appeal timely?

FINDINGS OF FACT:

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

The administrative record shows claimant received regular, state unemployment insurance benefits in the gross amount of \$512.00 per week for a total of 13 weeks, from the benefit week ending May 8, 2021 and continuing through the benefit week ending July 31, 2021. The total amount of regular, state unemployment insurance benefits paid during this period is \$6,656.00.

Claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$300.00 per week for a total of six weeks, from the benefit week ending May 8, 2021 and continuing through the benefit week ending June 12, 2021. The total amount of FPUC paid during this period is \$1,800.00.

Claimant was subsequently determined to be ineligible for benefits during the weeks filed in a decision dated August 4, 2021. That decision was later affirmed by an administrative law judge in

a decision dated October 7, 2021. See 21A-UI-17861-SN-T. It appears that decision was appealed further to the Employment Appeal Board (EAB), but a decision has not yet been issued.

The Unemployment Insurance Decision was mailed to claimant at the above address on October 12, 2021. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 22, 2021. 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 online on December 18, 2021.

Claimant did receive the decision and attempted to appeal by mail within approximately a week of receipt. After not hearing anything for some time he contacted the Department and learned the appeal was not received. He then appealed online at that time.

Claimant believes he has applied for a waiver of the FPUC overpayment amount. It also appears claimant applied for Pandemic Unemployment Assistance (PUA) on May 5, 2021 but that application has not been processed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated October 12, 2021 (reference 02) that determined claimant was overpaid unemployment insurance benefits in the amount of \$6,656.00 for 13 weeks between May 2 and July 31, 2021 based on a prior decision denying benefits is AFFIRMED.

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 the delay in appealing was due to agency or USPS error or delay. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative record shows claimant received regular, state unemployment insurance benefits in the gross amount of \$512.00 per week for a total of 13 weeks, from the benefit week ending May 8, 2021 and continuing through the benefit week ending July 31, 2021. The total amount of regular, state unemployment insurance benefits paid during this period is \$6,656.00.

Claimant was subsequently determined to be ineligible for benefits in a decision dated August 4, 2021. That decision was later affirmed by an administrative law judge in a decision dated October 7, 2021. See 21A-UI-17861-SN-T. It appears that decision was appealed further to the Employment Appeal Board (EAB), but a decision has not yet been issued.

Because claimant received unemployment insurance benefits totaling \$6,656.00 for which he was later found to be ineligible he has been overpaid in that amount. The administrative law judge

notes this MAY change, depending on how the EAB rules on claimant's appeal of the underlying decision denying benefits.

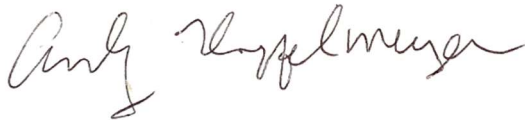
The administrative law judge also notes claimant may be eligible for Pandemic Unemployment Assistance (PUA) and/or a waiver of the FPUC overpayment. This matter is remanded to the Department for processing of those applications, pending the EAB's determination on claimant's underlying benefit eligibility.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated October 12, 2021 (reference 02) that determined claimant was overpaid unemployment insurance benefits in the amount of \$6,656.00 for 13 weeks between May 2 and July 31, 2021 based on a prior decision denying benefits is AFFIRMED.

REMAND:

This matter is remanded to the Department for processing of claimant's PUA and waiver applications, pending the EAB's determination on claimant's underlying benefit eligibility.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 28, 2022
Decision Dated and Mailed

abd/abd