

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BETTY S KIMVOLO
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-06627-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/10/20
Claimant: Appellant (1)**

PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Betty S. Kimvolo, filed an appeal from the December 8, 2021 (reference 04) unemployment insurance decision that established an overpayment of FPUC benefits. A first hearing was scheduled for April 29, 2022. However, due to an administrative error, it was rescheduled to allow proper notice.

After proper notice, a telephone hearing was conducted on May 16, 2022. The following six hearings were held together as one hearing: 22A-UI-06619-JC-T, 22A-UI-06624-JC-T, 22A-UI-06625-JC-T, 22A-UI-06627-JC-T, 22A-UI-06632-JC-T and 22A-UI-06634-JC-T. The claimant participated personally and through a French interpreter from CTS Language Link. Claimant's son, Esaie Mososongo testified. Official notice of the administrative records was taken. Department Exhibit 1 was admitted.

ISSUES:

Is the appeal timely?
Is Ms. Kimvolo overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Kimvolo filed a new claim for unemployment insurance benefits with an effective date of May 10, 2020.

Ms. Kimvolo filed for and received a total of \$13,000.00 in regular, state unemployment insurance benefits for the weeks between May 10, 2020 and November 14, 2020. She then received federal unemployment insurance benefits through Federal Pandemic Emergency Unemployment Compensation (PEUC). Claimant received \$13,000.00 in federal benefits for the period of November 15, 2020 and May 15, 2021. During the period of May 10, 2020 and May 15, 2021, claimant received \$12,600.00 in supplemental FPUC benefits.

The initial decision denying benefits to the Ms. Kimvolo has been affirmed in Appeal 22A-UI-06619-JC-T.

An initial decision (reference 04) was mailed to Ms. Kimvolo's address of record on December 8, 2021. The decision contained a warning that an appeal must be filed by December 18, 2021. The decision also directed Ms. Kimvolo to call the customer service line for assistance.

Ms. Kimvolo does not read or write English and relies upon her son to help translate documents from IWD. Mr. Mososongo did not have transportation and waited for a ride before visiting the Ms. Kimvolo and helping her. She filed the appeal on March 17, 2022 (See Department Exhibit 1) after receiving notification that her tax return would be withheld to repay an established overpayment. This was approximately three months after receiving notice of the initial overpayment decisions.

REASONING AND CONCLUSIONS OF LAW:

The issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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).

Ms. Kimvolo did not initially have an opportunity to appeal the initial decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant would have learned of the disqualifying decision through the overpayment decisions dated December 8, 2021. Even with a language barrier, Ms. Kimvolo delayed obtaining help for approximately three months before filing her appeal. The administrative law judge is sympathetic to the claimant. However, based on the evidence presented, this is not a reasonable period of delay under the circumstances. Iowa Admin. Code r. 871-24.35(2)(c).

Further, the evidence presented does not support that claimant's delay in appealing *was 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). The administrative law judge further concludes that 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).

The appeal is dismissed because it was not timely filed. The initial decision establishing an overpayment of regular benefits remains in effect. Ms. Kimvolo is overpaid \$12,600.00 in FPUC benefits.

This decision determines you are overpaid benefits, and the administrative law judge lacks authority to waive the overpayment. 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-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

DECISION:

The December 8, 2021 (reference 04) initial decision is affirmed. The appeal is dismissed because it was not timely filed. The initial decision establishing an overpayment of FPUC benefits remains in effect. The claimant is overpaid \$12,600.00 in FPUC benefits.



Jennifer L. Beckman
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May 20, 2022
Decision Dated and Mailed

jlb/scn