

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTONIO R IRWIN
Claimant

APPEAL 20R-UI-04684-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAFELITE SOLUTIONS LLC
Employer

OC: 02/09/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On March 13, 2020, the claimant filed an appeal from the February 26, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was originally scheduled for April 27, 2020. Claimant did not answer at the number provided for the hearing and the appeal was dismissed. Claimant filed an appeal with the Employment Appeal Board (EAB). The EAB remanded the case for a new hearing. The hearing was scheduled for June 15, 2020. The parties were properly notified of the hearing. Claimant participated. Employer participated through assistant contact center manager for Iowa Matthew Goettl and was represented by Trenton Kilpatrick. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?

Did claimant voluntarily quit the employment with good cause attributable to employer?

Was the claimant overpaid unemployment insurance 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: On February 26, 2020, Iowa Workforce Development mailed the reference 01 unemployment insurance decision to the claimant's last known address of record. Claimant received the decision on March 5, 2020, within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by March 7, 2020. The appeal was not filed until March 13, 2020, which is after the date noticed on the unemployment insurance decision. At first, claimant did not plan to appeal the decision because of a number of issues going on in his personal life. On March 13, 2020, claimant communicated with Iowa Workforce Development customer service representatives who instructed him that he could still file an appeal. Claimant filed an appeal the same day.

Due to a backlog of appeals because of the COVID 19 pandemic, Iowa Workforce Development unlocked all claims that were denied and pending an appeal hearing in March 2020. Because of that, claimant received \$3,168.00 in regular unemployment insurance benefits for the nine weeks ending April 11, 2020. Claimant also received \$1,200.00 in Federal Pandemic Unemployment Compensation for the two weeks ending April 21, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

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 unemployment insurance 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions 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). 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).

Therefore, the decision denying regular, state-funded unemployment insurance benefits stands.

OVERPAYMENT

Because claimant is not eligible for regular, state-funded unemployment insurance benefits, the next issue is whether claimant was overpaid benefits.

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.

b. (1) 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 § 96.8, subsection 5. . . .

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$3,168.00 pursuant to Iowa Code § 96.3(7) as claimant was not eligible for benefits during the nine weeks ending April 11, 2020.

The administrative law judge additionally concludes claimant has been overpaid Federal Pandemic Unemployment Compensation.

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 (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC) at this time. In addition to the regular UI benefits claimant received, claimant also received an additional \$1,200.00 in FPUC benefits for the two week period ending April 11, 2020. Claimant is required to repay those benefits.

DECISION:

The February 26, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal is untimely. Regular unemployment insurance benefits funded by the state of Iowa are denied. Claimant is overpaid regular, state-funded unemployment insurance benefits in the amount of \$3,168.00. Claimant is overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$1,200.00. Claimant must repay those benefits. Claimant may be eligible for federally-funded benefits called "PUA" as noted in the instructions below.



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

June 26, 2020
Decision Dated and Mailed

cal/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, 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>.