

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAMARYS GARCIA
Claimant

APPEAL 22A-UI-11510-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from the April 15, 2022 (reference 03) unemployment insurance decision that found claimant was overpaid unemployment insurance (UI) and Federal Pandemic Unemployment Compensation (FPUC) benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 20, 2022. Claimant participated. Spanish interpretation was provided by German (ID: 14133) of CTS Language Link. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.
Whether claimant was overpaid UI benefits.
Whether claimant was overpaid FPUC benefits.

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the correct address of record on April 15, 2022. Claimant did not live at that address; claimant's daughter did. Claimant did not update her address with Iowa Workforce Development (IWD) or the United States Postal Service when she moved from the address of record. Claimant's daughter saved mail address to claimant and gave claimant the mail when she visited. Claimant received the April 15, 2022 decision from her daughter on May 2, 2022.

The decision states that it becomes final unless an appeal is postmarked or received by IWD Appeals Section by April 27, 2022. Claimant appealed the decision online on May 2, 2022. IWD received the appeal on May 2, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not appeal the decision until after the deadline. Claimant's delay was due to her decision not to update her address with IWD or the postal service and her failure to check her mail at the address of record on a regular and frequent basis. Claimant has not established that her delay was due to any agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The April 15, 2022 (reference 03) unemployment insurance decision is affirmed.



Adrienne C. Williamson
Administrative Law Judge
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Iowa Workforce Development
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Fax (515)478-3528

June 29, 2022
Decision Dated and Mailed

acw/ACW

NOTE TO CLAIMANT: This decision determines you have been overpaid benefits 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-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.