

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**LARRY W COLEMAN**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL NO. 22A-UI-14575-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (1R)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.3(7) – Overpayment of Regular Benefits and LWAP  
P.L. 116-136, §2104 – Federal Pandemic Unemployment Compensation Overpayment

**STATEMENT OF THE CASE:**

On June 29, 2022, Rebecca Coleman, wife of Larry Coleman (claimant), filed a late appeal from the May 18, 2022 (reference 03) decision that held the claimant was overpaid \$2,851.00 in regular benefits for 15 weeks between April 12, 2020 and August 1, 2020, \$8,400.00 in Federal Pandemic Unemployment Compensation (FPUC) for 14 weeks between April 12, 2020 and July 25, 2020, and \$300.00 in Lost Wage Assistant Program (LWAP) benefits for the week ending August 1, 2020. The reference 03 decision stated the overpayment determinations were prompted by the reference 02 decision that denied benefits in connection with a determination the claimant was unable and unavailable for work. After due notice was issued, a hearing was held on August 9, 2022. Claimant participated and presented additional testimony through Rebecca Coleman. The employer did not comply with the hearing notice instructions to call the toll-free number at the time of the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-14574-JT-T. Exhibits A, B and C, the online appeal and attachments, were received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 02 and 03 decisions, the reference 02 fact-finding materials, DBIN, KPYX, KCCO, WAGE-A, and KLOG. The administrative law judge took official notice of the absence of a PUA application and absence of a decision allowing PUA benefits.

**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:

Rebecca Coleman, wife of Larry Coleman (claimant), established an original claim for benefits for the claimant that was effective April 12, 2020. The claimant delegated responsibility for all matters pertaining to the claim to his spouse. Mrs. Coleman made the weekly claims, interacted

with Iowa Workforce Development regarding the claim, and ultimately filed an appeal on behalf of the claimant.

The claimant filed his unemployment insurance claim in response to the employer's COVID-19 related temporary closure of the claimant's workplace, BRM II, L.C., doing business as Burger King, where the claimant was employed as a full-time manager. When the employer reopened for limited business, the claimant continued his claim due to the employer only being able to provide reduced work hours. The claimant continued his claim through the week that ended August 1, 2020. The claimant provided a copy of his time cards to his spouse. The claimant's spouse reported the claimant's weekly wages by multiplying the number of hours the claimant worked during the claim week by the claimant's \$13.00 gross hourly wage. Between April 12, 2020 and July 27, 2020, the claimant worked all the hours the employer had available for him.

The claimant discontinued his claim for benefits after he made a claim for the week that ended August 1, 2020. The claimant discontinued the claim in the context of the claimant going off work effective July 28, 2020 to undergo carpal tunnel surgery scheduled for July 28, 2020. Prior to the surgery, the claimant last worked for the employer on July 27, 2020.

On August 2, 2020, the claimant's wife corresponded by email with Iowa Workforce Development customer service to discuss the claimant's need to go off work for carpal tunnel surgery and to discuss whether the claimant would continue to be eligible for benefits in light of his need to undergo and recover from the surgery. The agency representative advised the claimant should discontinue the claim until he was again able to work.

On March 23, 2021, Iowa Workforce Development mailed the March 23, 2021 (reference 02) decision to the claimant's New Virginia, Iowa last-known address of record. The reference 02 decision denied regular state benefits effective April 12, 2020. In the decision, the deputy erroneously denied benefits effective April 12, 2020, based on the deputy's erroneous conclusion the claimant's need for time off due to illness began at the April 12, 2020 start of the claim rather than the July 28, 2020 surgery date. The reference 02 decision stated the decision would become final unless an appeal was postmarked by April 2, 2021 or was received by the Appeals Section by that date. The claimant received the reference 02 decision in a timely manner, prior to the deadline for appeal.

Upon receipt of the March 23, 2021 (reference 02) decision, the claimant's spouse called Iowa Workforce Development and spoke with a customer service representative. During that call, the claimant's spouse explained the medical circumstances under which the claimant had gone off work in early August 2020. The claimant's spouse erroneously assumed the benefits denial pertaining to the period beginning April 12, 2020 was resolved. The customer service representative had suggested the claimant apply for Pandemic Unemployment Assistance (PUA). There is nothing to indicate the customer service representative said anything to indicate the claimant would not need to appeal from the reference 02 decision. The claimant did not apply for PUA benefits and did not take steps to file an appeal from the reference 02 decision by the April 2, 2021 appeal deadline.

On May 18, 2022, IWD mailed the May 18, 2022 (reference 03) decision to the claimant's New Virginia, Iowa last-known address of record. The reference 03 decision held the claimant was overpaid \$2,851.00 in regular benefits for 15 weeks between April 12, 2020 and August 1, 2020, \$8,400.00 in Federal Pandemic Unemployment Compensation (FPUC) for 14 weeks between April 12, 2020 and July 25, 2020, and \$300.00 in Lost Wage Assistant Program (LWAP) benefits for the week ending August 1, 2020. The reference 03 decision stated the overpayment determinations were prompted by the reference 02 decision that denied benefits in connection

with a determination the claimant was unable and unavailable for work. The reference 03 decision stated the decision would become final unless an appeal was postmarked by May 29, 2022 or was received by the Appeal Section by that date. The reference 03 decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. May 29, 2022 was a Sunday. May 30, 2022 was the Memorial Day holiday. The next working day was Tuesday, May 31, 2022. The claimant received the reference 03 decision in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal by the May 31, 2022 extended appeal deadline. The envelope containing the overpayment decision remained in the claimant's possession but unopened until June 27, 2022.

On June 29, 2022, the claimant's spouse completed and transmitted a late appeal from the reference 03 overpayment decision. The Appeals Bureau received the appeal on June 29, 2022 and treated the appeal as also a late appeal from the March 23, 2021 (reference 02) disqualification decision.

In Appeal Number 22A-UI-14574-JT-T, the administrative law judge ruled the reference 02 disqualification decision remained in effect due to an untimely appeal from that decision.

## **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 evidence in the record establishes an untimely appeal from the May 18, 2022 (reference 03) overpayment decision. The evidence establishes that the claimant received the reference 03 decision in a timely manner, had a reasonable opportunity to file an appeal by the extended appeal deadline, but unreasonably delayed filing the appeal to June 29, 2022. 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 May 18, 2022 (reference 03) overpayment decision. 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 May 18, 2022 (reference 03) overpayment decision was untimely. For that reason, the decision that held the claimant was overpaid \$2,851.00 in regular benefits for 15 weeks between April 12, 2020 and August 1, 2020, \$8,400.00 in Federal Pandemic Unemployment Compensation (FPUC) for 14 weeks between April 12, 2020 and July 25, 2020, and \$300.00 in Lost Wage Assistant Program (LWAP) benefits for the week ending August 1, 2020, all based on the reference 02 disqualification decision, remains in effect.

**REMAND:**

In light of evidence presented by the claimant and the administrative law judge's lack of jurisdiction to disturb the reference 02 and 03 decisions, this matter is REMANDED to the Benefits Bureau for further review of the reference 02 and 03 decisions and for consideration of whether amended decisions should enter. Based on the jurisdictional issue, the administrative law judge is unable to compel the Benefits Bureau to take action.



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James E. Timberland  
Administrative Law Judge

September 27, 2022  
Decision Dated and Mailed

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*Note to Claimant:* This decision determines you have been overpaid FPUC and LWAP benefits. If you disagree with this decision, you may file an appeal by following the instructions on the final page of this decision. Additionally, instructions for requesting a waiver of the FPUC and LWAP overpayments can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a FPUC and LWAP waiver, you will have to repay the FPUC and LWAP benefits you received.

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.