

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EMILY FOBIAN**  
Claimant

**APPEAL 21A-UI-21121-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/29/20**  
**Claimant: Appellant (6)**

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Iowa Code § 96.6(2) - Timeliness of Appeal  
PL 116-136, Sec. 2104 - Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On September 22, 2021, claimant/appellant, Emily Fobian, filed an appeal from the September 3, 2021, (reference 04) unemployment insurance decision that found claimant was overpaid \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for an 8-week period ending 05/23/2020. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for November 18, 2021. The claimant participated. The Department did not participate. Judicial notice was taken of the administrative file.

**ISSUES:**

Is claimant's appeal timely?  
Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: claimant's appeal is dated September 22, 2021 and to be timely, needed to be filed on or before September 13, 2021. The decision was mailed to claimant's last known address. Claimant had failed to notify Iowa Workforce Development of her most current address. With mail forwarding, claimant timely got the decision one either September 11 or 12, 2021. She recalls the date, as she drove from Arizona to Iowa starting on September 12, 2021 in order to see her ill grandfather before he passed away. Claimant did not file her appeal until September 22, 2021, which is after the deadline.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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).

Appellant timely received the decision in the mail and therefore had an opportunity to file an appeal prior to the appeal deadline. Appellant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

**DECISION:**

The September 22, 2021, claimant/appellant, Emily Fobian, filed an appeal from the September 3, 2021, (reference 04) unemployment insurance decision that found claimant was overpaid \$4,800.00 in benefits is **AFFIRMED**. The appeal in this case was not timely, and the decision of the representative remains in effect.



Darrin T. Hamilton  
Administrative Law Judge

January 7, 2022

Decision Dated and Mailed

dh/abd

*Notes to Claimant:*

This decision determines you have been overpaid FPUC 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/federal-unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Claimant provided an updated address during the hearing, by removing the Cedar Falls address and adding the Tucson address. That corrected address is noted on the first page of this decision. Claimant is directed to contact IWD customer service at 1-866-239-0843 as soon as possible to update their contact information so that their information can be updated within our systems and not just on this one printed decision.