

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AMY M DUNNE**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-02252-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Amy M. Dunne (claimant/appellant) appealed the decision dated December 17, 2021 (reference 02) that concluded the claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$2,400.00 for the two-week period ending April 4, 2020 due to duplicate payments being issued in error.

A telephone hearing was held on February 17, 2022, pursuant to due notice. The hearing was held together with Appeal 22A-UI-02251-JC-T. Claimant participated personally. Official notice of the administrative record was taken. Department Exhibit 1 (Appeal letter) was admitted.

**ISSUES:**

Is the appeal timely?

Was the claimant overpaid Federal Pandemic Unemployment Compensation (FPUC)

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed her claim for unemployment insurance benefits with an effective date of March 22, 2020. Administrative records reflect claimant filed for and was approved for PUA benefits. Claimant was also entitled to receive supplemental FPUC benefits beginning March 29, 2020. Administrative records state claimant was overpaid FPUC benefits for the week ending April 4, 2020, due to inadvertent overpayments issued by IWD.

An initial unemployment insurance decision (Reference 02) establishing an overpayment of FPUC benefits was mailed to claimant's last known address of record on December 17, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 27, 2021. Claimant changed her address twice in December, but received the decision within the appeal period. Claimant stated she completed the appeal on the "Tuesday after the holiday" (December 28, 2021) and placed the appeal in the mail. She acknowledged her

mail is collected late in the day and probably not postmarked on the day collected. The appeal was postmarked on December 29, 2021 (Department Exhibit 1).

### REASONING AND CONCLUSIONS OF LAW:

The issue to address is whether claimant filed a timely appeal.

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.

Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983).

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);

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Claimant in this case received the initial decision within the prescribed period to appeal. Claimant filed her appeal by mail on December 29, 2021, which is after the deadline. Claimant's failure 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).

This decision determines claimant is overpaid benefits, and the administrative law judge lacks authority to waive the overpayment. If claimant disagrees with this decision claimant 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>.

**DECISION:**

The December 17, 2021, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Claimant has been overpaid FPUC benefits in the amount of \$2,400.00.



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Jennifer L. Beckman  
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March 10, 2022

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Decision Dated and Mailed

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