

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**ANDREA K STREIGLE**  
Claimant

**APPEAL NO. 22R-UI-03789-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/15/20**  
**Claimant: Appellant (1R)**

---

Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits  
Fed Law PL 116-136, Sec. 2104 – Overpayment of FPUC

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the April 9, 2021, reference 04, decision that found claimant to have been overpaid benefits. After due notice was issued, a hearing was held on March 11, 2022. The claimant did participate.

**ISSUES:**

Whether the appeal is timely?

Whether claimant is overpaid FPUC benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on April 9, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 19, 2021. The appeal was not filed until August 31, 2021, which is after the date noticed on the disqualification decision. Claimant stated she did receive this decision. She stated that she did not have a reason why she did not appeal, other than thinking she had no right to appeal. (The decision was read back to claimant, including the appeal rights.)

The overpayment issue in this case was created by a ruling claimant was improperly paid FPUC unemployment benefits. Claimant was deemed to have been overpaid \$2,400.00 in FPUC unemployment benefits for the five weeks ending January 9, 2021. Claimant admitted to receiving these payments. Claimant received three weeks of FPUC benefits of \$600.00 / week for the weeks between May 10 and June 6, 2020. Claimant then received two weeks of FPUC benefits that were supplemental to PUA benefits received for the dates between December 27, 2020 through January 9, 2021.

Claimant was found to be ineligible for unemployment benefits after the date of May 31, 2020 in case 21A-UI-11909-DG-T. Claimant was found to be ineligible for benefits after the date of December 13, 2021 in case 22A-UI-03787-B2-T. (It is noted that claimant was found eligible to receive PUA benefits after the date of December 27, 2021, and further noted that claimant's FPUC benefits received during this time were supplemental to her PUA award.)

### **REASONING AND CONCLUSIONS OF LAW:**

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 begin 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 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. 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

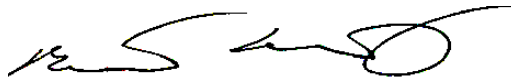
The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

This matter is remanded to the benefits bureau for a recalculation of overpayments as Claimant was found to be ineligible for unemployment benefits after the date of May 31, 2020 in case 21A-UI-11909-DG-T. Amounts listed for overpayment of PUA benefits begin prior to the date claimant was found ineligible as they begin on May 17, 2020. Additionally, Claimant was found to be ineligible for benefits after the date of December 13, 2021 in case 22A-UI-03787-B2-T. (It is noted that claimant was found eligible to receive PUA benefits after the date of December 27, 2021, and further noted that claimant's FPUC benefits received during this time were supplemental to her PUA award.)

**DECISION:**

The April 9, 2021, reference 04, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

This matter is remanded to the benefits bureau for a recalculation of overpayments as Claimant was found to be ineligible for unemployment benefits after the date of May 31, 2020 in case 21A-UI-11909-DG-T. Amounts listed for overpayment of PUA benefits begin prior to the date claimant was found ineligible as they begin on May 17, 2020. Additionally, Claimant was found to be ineligible for benefits after the date of December 13, 2021 in case 22A-UI-03787-B2-T. (It is noted that claimant was found eligible to receive PUA benefits after the date of December 27, 2021, and further noted that claimant's FPUC benefits received during this time were supplemental to her PUA award.)



---

Blair A. Bennett  
Administrative Law Judge

March 25, 2022  
Decision Dated and Mailed

bab/scn

**NOTE TO CLAIMANT:**

- This decision determines you have been overpaid FPUC 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.
- You may also request a waiver of this overpayment. The written request must include the following information:
  1. Claimant name & address.
  2. Decision number/date of decision.
  3. Dollar amount of overpayment requested for waiver.
  4. Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development  
Overpayment waiver request  
1000 East Grand Avenue  
Des Moines, IA 50319
- This Information can also be found on the Iowa Workforce Development website 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.