

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELSEY R JONES
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-04675-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Kelsey R Jones, the claimant/appellant, filed an appeal from the August 18, 2021 (reference 04) unemployment insurance (UI) decision that concluded she was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$1,200.00. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2022. Ms. Jones participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Jones' appeal filed on time?
Has Ms. Jones been 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 Ms. Jones at the correct address on August 18, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by August 28, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. August 28, 2021 was a Saturday; therefore, the deadline was extended to Monday, August 30, 2021.

Ms. Jones did not receive the decision. IWD issued two additional overpayment decisions finding Ms. Jones was overpaid REGULAR (state) UI benefits, and Lost Wage Assistance Payments (LWAP) benefits. Both of those decisions were also dated August 18, 2021, reference 03 and 05 respectively. Ms. Jones did not receive those decisions either. IWD issued another decision, dated February 10, 2022, (reference 06) that notified Ms. Jones that IWD was withholding her 2021 Iowa income tax refund to apply to an overpayment of UI benefits that she owes to IWD. Ms. Jones received that decision. Ms. Jones filed an appeal online on February 15, 2022. The appeal was received by Iowa Workforce Development on February 15, 2022.

The administrative law judge further finds: Ms. Jones filed an initial claim for REGULAR (state) UI benefits effective May 10, 2020. Ms. Jones received REGULAR UI benefits on her claim. Ms. Jones also received FPUC benefits in the gross amount of \$1,200.00 for 2 weeks between July 12, 2020 and July 25, 2020.

FPUC was a program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 that provided additional payment to those individuals that are receiving state or federal unemployment insurance payments. It is funded by the federal government, not by state unemployment taxes paid by employers. The Continued Assistance for Unemployed Workers Act of 2020 (enacted December 27, 2020) and American Rescue Act of 2021 (enacted March 11, 2021) extended FPUC benefits for weeks of unemployment to September 6, 2021. The FPUC amount was \$600.00 per week from April 5, 2020 through July 31, 2020. The FPUC amount was \$300.00 per week from December 27, 2020 through September 5, 2021. Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the FPUC program, effective June 12, 2021.

Over four months after she filed her initial claim, and had already received REGULAR UI benefits, and FPUC benefits IWD issued a reference 01 decision finding Ms. Jones not eligible for REGULAR UI benefits as of July 12, 2020 because Ms. Jones was not willing to work during the times when work in her occupation is often done. Ms. Jones appealed the decision to the Iowa Workforce Development Appeals Bureau. The administrative law judge's decision in Appeal 20A-UI-12363-CL-T dismissed Ms. Jones' appeal because she did not participate in the hearing. That meant Ms. Jones was not eligible for benefits as of July 12, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Jones' appeal of the reference 04 decision was filed on time.

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).

Ms. Jones did not receive the reference 04 decision before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Ms. Jones filed her appeal within 10 days of her receiving the Iowa income tax refund withholding decision from IWD. Ms. Jones' appeal of the reference 04 decision was filed on time.

The administrative law judge further concludes: Ms. Jones has been overpaid FPUC benefits.

Iowa Code §96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the

amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Since Ms. Jones is not eligible for REGULAR UI benefits, she is also not eligible for FPUC benefits. Ms. Jones has been overpaid FPUC benefits in the gross amount of \$1,200.00 for 2 weeks between July 12, 2020 and July 25, 2020, which should be repaid.

DECISION:

Ms. Jones' appeal of the reference 04 decision was filed on time. The August 18, 2021, (reference 04) decision is AFFIRMED. Ms. Jones has been overpaid FPUC benefits in the gross amount of \$1,200.00, which must be repaid.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 1, 2022
Decision Dated and Mailed

dz/kmj

NOTE TO MS. JONES:

- 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 1) by filing an appeal to the EAB, 2) applying for a waiver online, or 3) applying for a waiver in writing by mail.**
- The **online request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written request** must include the following information:
 - Your name & address.
 - Decision number/date of decision.
 - Dollar amount of overpayment requested for waiver.
 - 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
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.