

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ROBYNNE B HAYES**  
Claimant

**APPEAL NO. 21A-UI-04004-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 03/22/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

On January 27, 2021, Robynne Hayes (claimant/appellant) appealed the January 15, 2021 (reference 02) decision that concluded the claimant was overpaid Pandemic Emergency Unemployment Compensation (PEUC) in the amount of \$4,329.00 for a nine-week period between October 11 through December 12, 2020 because she failed to properly report wages.

A telephone hearing was held on April 2, 2021, pursuant to due notice. Claimant participated personally. The Department participated by Investigator Seth Jones.

Department's exhibits 1, 2, 8, 9, and 10 were admitted. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Was the claimant overpaid PEUC?

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the above address on January 15, 2021. That was claimant's correct address at that time. Claimant received the decision on January 20, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 25, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. January 25, 2021 was a Monday, so the deadline was not extended.

Claimant appealed the decision on January 27, 2021. Claimant did not appeal until that time because she believed she had ten days from the date of receipt of the decision to file an appeal.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The January 15, 2021 (reference 02) decision that concluded the claimant was overpaid Pandemic Emergency Unemployment Compensation (PEUC) in the amount of \$4,329.00 for a nine-week period between October 11 through December 12, 2020 because she failed to properly report wages is therefore final and remains in force.

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)(a) 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 on 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)
  - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 administrative law judge finds claimant did receive the decision in a timely manner and did have a reasonable opportunity to file an appeal in a timely manner. Claimant had several days to file a timely appeal after receiving the decision. The delay in appealing was due to her failure to take note of the clear language on the decision identifying January 25, 2021 as the date the decision becomes final. Because claimant has not established a good cause reason for the late filing, the appeal is untimely; the decision appealed is final; and the administrative law judge has no jurisdiction to change it. It therefore remains in force and effect.

**DECISION:**

The administrative law judge concludes the claimant's appeal was untimely. The January 15, 2021 (reference 02) decision that concluded the claimant was overpaid Pandemic Emergency Unemployment Compensation (PEUC) in the amount of \$4,329.00 for a nine-week period between October 11 through December 12, 2020 because she failed to properly report wages is therefore final and remains in force.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

April 12, 2021  
Decision Dated and Mailed

abd/lj

**Note to Claimant:**

This decision determines you have been overpaid FPUC and/or PEUC 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/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.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.