

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAVID J DUNCAN**

Claimant

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**APPEAL NO. 24A-UI-08319-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/29/23**

**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

On September 22, 2024, David Duncan (claimant) filed a late appeal from the September 3, 2024 (reference 01, o.c. 01/29/23) decision that held he was overpaid \$1,716.00 in regular state benefits for three weeks between February 12, 2023 and March 4, 2023 because he failed to report wages earned with Lee Construction, Inc.

After due notice was issued, a hearing was held on October 8, 2024. Mr. Duncan participated. Shawn Kennedy represented Iowa Workforce Development and presented additional testimony through Kasandra Ellenwood. There were seven appeal numbers set for a consolidated hearing: 24AUI08316JTT, 24AUI08317JTT, 24AUI08318JTT, 24AUI08319JTT, 24AUI08320JTT, 24AUI08321JTT, and 24AUI08322JTT. Claimant's Exhibit A and IWD's Exhibits 1 through 19 were received into evidence. The administrative law judge took official notice of the following IWD September 3, 2024 overpayment decisions: reference 02 (o.c. 01/19/20), reference 03 (o.c. 01/19/20), reference 01 (o.c. 01/31/21), reference 02 (o.c. 01/31/21), reference 01 (o.c. 01/30/22), and reference 01 (o.c. 01/29/23). The administrative law judge took official notice of the September 17, 2024 (reference 04, o.c. 01/19/20) FPUC overpayment waiver denial decision. In connection with Appeal Number 24A-UI-08318-JT-T, the administrative law judge also took official notice of the following IWD administrative records: DBIN (o.c. 01/19/20), DBIN (o.c. 01/31/21), DBIN (o.c. 01/30/22), DBIN (o.c. 01/29/23), KCCO, WAGE-A, WAGE-B, NMRO, and the Federal Overpayment Waiver Criteria Guidelines worksheet, the overpayment waiver application, and the IWD overpayment balance record. The waiver application was not available at the time of the appeal hearing but became available immediately after the hearing concluded.

**ISSUE:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

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

On September 3, 2024, Iowa Workforce Development mailed six overpayment decisions to claimant David Duncan at his Glenwood, Iowa last-known address of record, as follows.

The September 3, 2024 (reference 02, o.c. 01/19/20) decision held that Mr. Duncan was overpaid \$4,075.00 in regular state benefits for 10 weeks between January 19, 2024 and January 2, 2021 because Mr. Duncan incorrectly reported wages earned with Lee Construction, Inc.

The September 3, 2024 (reference 03, o.c. 01/19/20) decision held that Mr. Duncan was overpaid \$1,500.00 in Federal Pandemic Unemployment Compensation (FPUC) for three weeks between April 12, 2020 and January 2, 2021 because he failed to report and/or incorrectly reported wages earned with Lee Construction, Inc.

The September 3, 2024 (reference 01, o.c. 01/31/21) decision held that Mr. Duncan was overpaid \$2,200.00 in regular state benefits for six weeks between January 31, 2021 and January 8, 2022 because he incorrectly reported wages earned with Lee Construction, Inc.

The September 3, 2024 (reference 02, o.c. 01/31/21) decision held that Mr. Duncan was overpaid \$900.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for three weeks between February 7, 2021 and April 10, 2021 because he failed to report and/or incorrectly reported wages earned with Lee Construction, Inc.

The September 3, 2024 (reference 01, o.c. 01/30/22) decision held that Mr. Duncan was overpaid \$2,732.00 in regular state benefits for seven weeks between March 6, 2022 and January 28, 2023 because he incorrectly reported wages earned with Lee Construction, Inc.

The September 3, 2024 (reference 01, o.c. 01/29/23) decision held that Mr. Duncan was overpaid \$1,716.00 in regular benefits for three weeks between February 12, 2023 and March 4, 2023 because he failed to report wages earned with Lee Construction, Inc.

Each of the September 3, 2024 decisions stated that the decision would become final unless an appeal was postmarked by September 13, 2024 or was received by the Appeals Section by that date.

The back side of each of the September 3, 2024 decisions included a reminder of the 10-day deadline to file an appeal from the decision and included clear and concise instructions for filing an appeal from the decision online, by fax, by email, or by regular mail.

Each of the September 3, 2024 decisions included a toll-free number Mr. Duncan could call to reach IWD customer service if he had questions about the decision. Each of the decisions also included a toll-free number Mr. Duncan could call to reach the UI Appeals Bureau if he had questions about the appeal process.

Mr. Duncan received each of the September 3, 2024 overpayment decisions in a timely manner, prior to the September 13, 2024 deadline for appeal. Mr. Duncan did not take steps to file an appeal from any of the six September 3, 2024 overpayment decisions by the September 13, 2024 appeal deadline. No one from IWD or from the UI Appeals Bureau said or suggested to Mr. Duncan that there was no need to file an appeal from the September 3, 2024 decisions or that he should wait to file an appeal.

Rather than take steps to file an appeal from any or all of the September 3, 2024 overpayment decisions by the September 13, 2024 appeal deadline, Mr. Duncan focused instead on his desire

to request waiver of repayment of the FPUC benefits deemed overpaid. Mr. Duncan decided to wait to file an appeal from the September 3, 2024 overpayment decisions until after he received a decision regarding his request to waive repayment of the FPUC benefits deemed overpaid.

On September 17, 2024, Iowa Workforce Development mailed the September 17, 2024 (reference 04, o.c. 01/19/20) waiver denial decision to Mr. Duncan's address of record. The reference 04 decision denied Mr. Duncan's request to waive repayment of the combined \$2,400.00 in overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits. The reference 04 decision included a September 27, 2024 deadline for appeal.

On September 22, 2024, Mr. Duncan completed and transmitted to the UI Appeals Bureau an online appeal from the six September 3, 2024 overpayment decisions. In the appeal, Mr. Duncan indicated he had received the decisions close in time to the September 3, 2024 decision mailing date. The Appeals Bureau received the appeal on September 22, 2024. The Appeals Bureau treated the appeal as a late appeal from each of the six September 3, 2024 overpayment decisions and as a timely appeal from the September 17, 2024 (reference 04) FPUC overpayment waiver denial decision.

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

Iowa Code section 96.6(2) in relevant part as provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. ... 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 87124.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 87124.35(1)(b).

The evidence in the record establishes 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 87124.35(2)(c).

The evidence in the record establishes an untimely appeal from the September 3, 2024 (reference 01, o.c. 01/29/23) overpayment decision. Mr. Duncan received the decision in a timely manner. Mr. Duncan had a reasonable opportunity to file an appeal by the September 13, 2024 appeal deadline but elected to delay filing the appeal to September 22, 2024. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or to delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 87124.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the September 3, 2024 (reference 01, o.c. 01/29/23) overpayment decision was untimely. The decision that held the claimant was overpaid \$1,716.00 in regular state benefits for three weeks between February 12, 2023 and March 4, 2023 because he failed to report wages earned with Lee Construction, Inc. remains in effect.



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James E. Timberland  
Administrative Law Judge

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October 17, 2024  
Decision Dated and Mailed

r/s

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.