

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**COREY M KELLEHER**  
Claimant

**APPEAL NO. 22A-UI-07888-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/26/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Filing – Timely Appeal  
PL 116-136, Sec. 2107 - Pandemic Emergency Unemployment Compensation

**STATEMENT OF THE CASE:**

On March 31, 2022, Corey Kelleher (claimant/appellant) appealed the Iowa Workforce Development (“IWD”) decision dated March 8, 2022 (reference 03) that concluded the claimant was overpaid Pandemic Emergency Unemployment Compensation in the amount of \$12,000.00 for 24 weeks between September 27, 2020 and March 13, 2021 as a result of a prior decision denying benefits.

A telephone hearing was held on May 12, 2022, pursuant to due notice. Claimant participated personally. The proposed exhibits were not admitted due to being irrelevant to the issues noticed. The administrative law judge took official notice of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?

**FINDINGS OF FACT:**

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

The Unemployment Insurance Decision was mailed to claimant at the above address on March 8, 2022. That was claimant’s correct address at that time. Claimant did receive the decision prior to the deadline to appeal. Claimant believes he received it a day or two prior to the deadline.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 18, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. March 18, 2022 was a Friday and not a holiday so the deadline was not extended. There are clear directions on the decision for how to appeal via mail, fax, or online.

Claimant appealed the decision on March 31, 2022. The delay in appealing was due to claimant calling IWD for information and gathering evidence. Claimant delayed in appealing for at least two weeks from when he received the decision.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated March 8, 2022 (reference 03) that concluded the claimant was overpaid Pandemic Emergency Unemployment Compensation in the amount of \$12,000.00 for 24 weeks between September 27, 2020 and March 13, 2021 as a result of a prior decision denying benefits 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:

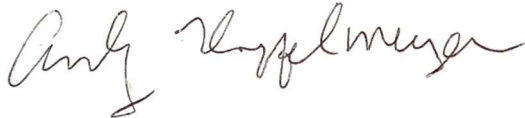
2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission 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 decision was mailed to claimant at the correct address and it was received prior to the deadline to appeal. Even allowing some additional time for appealing due to USPS delay, claimant still delayed in appealing for at least two weeks from when he received the decision. It was not necessary for claimant to contact IWD or gather evidence prior to appealing. The decision is clear regarding the deadline to appeal and how to appeal. Claimant chose not to act in conformance with that information. The administrative law judge therefore finds claimant had a reasonable opportunity to file a timely appeal but did not do so and has not established a good cause reason for delay. The appeal is therefore untimely and has become final, meaning the administrative law judge lacks jurisdiction to change it.

**DECISION:**

The administrative law judge concludes the claimant's appeal was untimely. The decision dated March 8, 2022 (reference 03) that concluded the claimant was overpaid Pandemic Emergency Unemployment Compensation in the amount of \$12,000.00 for 24 weeks between September 27, 2020 and March 13, 2021 as a result of a prior decision denying benefits is therefore final and remains in force.



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Andrew B. Duffelmeyer  
Administrative Law Judge

May 13, 2022  
Decision Dated and Mailed

abd/abd

**Note to Claimant:**

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.

If this decision determines you have been overpaid federal pandemic-related benefits you may request a waiver of the overpayment. Instructions for requesting a waiver 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 do not qualify for regular unemployment insurance benefits and were unemployed between February 2, 2020, and June 12, 2021 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is the PIN you used for the hearing.**

If this decision becomes final and you are not eligible for PUA, you may have an overpayment of benefits.