

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

KARI K SMITH
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-15334-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Kari K. Smith, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) April 14, 2022 (reference 03) unemployment insurance (UI) decision that concluded she was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$4,800.00 for 8 weeks between May 31, 2020 and July 25, 2020, and Lost Wage Assistance Payments (LWAP) benefits in the gross amount of \$600.00 for 2 weeks between July 26, 2020 and August 8, 2020.¹ The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2022. Ms. Smith participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the Ms. Smith's appeal filed on time?
Has Ms. Smith been overpaid FPUC and/or LWAP benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the UI decision to Ms. Smith at the correct address on April 14, 2022. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by April 25, 2022.

IWD also mailed Ms. Smith another UI decision on April 14, 2022. That decision, a reference 02 decision, concluded that Ms. Smith was overpaid REGULAR (state) UI benefits in the gross amount of \$3,250.00. Ms. Smith received both overpayment decisions in the mail before April 24, 2022. Ms. Smith called IWD within a few days of when she received the decisions. The IWD representative told Ms. Smith that she could file an appeal. Both overpayment decisions told Ms. Smith in the "To Appeal This Decision:" section that the decisions would become final unless she filed an appeal to IWD by the deadline.

¹ The UI decision incorrectly states that this overpayment is for 6 weeks between July 26, 2020 and August 8, 2020.

Ms. Smith did an internet search, found an appeal link on the Iowa Department of Human Services (DHS) website, and filed an appeal with DHS in late April 2022. On, or about, July 5, 2022, Ms. Smith received a letter from DHS telling her that DHS had no record of any DHS decision that she could appeal. About a week later, Ms. Smith went to the IWD local office to ask for help. The IWD representative told Ms. Smith she could file an appeal. Ms. Smith filed her appeal with IWD about a week after she went to the IWD local office. Ms. Smith filed an appeal online on July 19, 2022. The appeal was received on July 19, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Smith's appeal of the April 14, 2022 (reference 03) UI decision was not 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:

2. 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:
 - (2) 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. Smith received the April 14, 2022 (reference 03) UI decision by the April 25, 2022 deadline and, therefore, could have filed an appeal by the appeal deadline. The notice provision of the decision was valid. Ms. Smith's delay in filing her appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay in filing her appeal. Even after Ms. Smith filed her appeal with DHS instead of IWD, Ms. Smith did not file her appeal with ten days of when she received the letter from DHS telling her about her mistake. Ms. Smith's appeal of the April 14, 2022 (reference 03) UI decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Smith's appeal of the April 14, 2022 (reference 03) UI decision was not filed on time. The April 14, 2022 (reference 03) UI decision is AFFIRMED.



Daniel Zeno
Administrative Law Judge

October 3, 2022
Decision Dated and Mailed

dz/kmj

NOTE TO MS. SMITH:

- This decision determines you have been overpaid FPUC and LWAP benefits. **You may request a waiver of this overpayment 1) applying for a waiver online, 2) applying for a waiver in writing by mail, or filing an appeal** (see the last page of this decision for appeal information).
- The **online waiver request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written waiver 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.
- To check on your waiver application call **888-848-7442** or email iwduitax@iwdiowa.gov

APPEAL RIGHTS. If you disagree with this 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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.