

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

MARIE J HIGENS

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 23A-UI-08053-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal

Iowa Code § 8A.504 – Setoff Procedures (Iowa Department of Administrative Services)

Iowa Admin. Code r. 871-25.16 – State Payment Offset

STATEMENT OF THE CASE:

Marie J. Higen, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) July 7, 2023 (reference 08) unemployment insurance (UI) decision. The decision notified Ms. Higen that IWD is withholding her Iowa income tax refund, including a \$7.00 transfer fee from the Iowa Department of Administrative Services (DAS), to pay off an overpayment of UI benefits she owes to IWD. On August 23, 2023, the Iowa Department of Inspections, Appeals and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Higen and IWD for a telephone hearing scheduled for September 7, 2023.

The undersigned administrative law judge held a telephone hearing on September 7, 2023. Ms. Higen participated personally. IWD did not participate in the hearing. The undersigned took official notice of the administrative record.

ISSUES:

Did Ms. Higen file her appeal on time?

Is IWD's withholding of Ms. Higen's Iowa income tax refund authorized?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the undersigned finds: IWD mailed the July 7, 2023 (reference 08) UI decision to Ms. Higen at her address of record. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Monday, July 17, 2023.

At the end of June 2023, Ms. Higen had her mail forwarded to her sister's mailing address. At some point, Ms. Higen's sister saw the decision and told Ms. Higen about the decision. A few days later, Ms. Higen picked up her mail from her sister's house. This was soon after the appeal deadline had passed. Ms. Higen called the DIAL UI Appeals Bureau soon after she picked up the letter and asked if she could still file an appeal. The DIAL UI Appeals Bureau representative told Ms. Higen that she could. Ms. Higen filed an appeal via mail with a United

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

States Postal Service postmark date of August 18, 2023. The DIAL UI Appeals Bureau received the appeal on August 21, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. Higen did not file her appeal of the July 7, 2023 (reference 08) UI decision on time.

Iowa Code § 96.6(2) provides, in relevant 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.² Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.³

² *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *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. Higen received the July 7, 2023 (reference 08) UI decision before the appeal deadline and, therefore, could have filed an appeal by the deadline. The notice provision of the decision was valid. Ms. Higen's delay in filing her appeal was not due to an error or misinformation from IWD or due to delay or other action of the United States Postal Service. Ms. Higen has not established a good cause reason for the delay in filing the appeal. Ms. Higen did not file her appeal of the July 7, 2023 (reference 08) UI decision on time and the undersigned lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Higen did not file her appeal of the July 7, 2023 (reference 08) UI decision on time. The July 7, 2023 (reference 08) UI decision is AFFIRMED.



Daniel Zeno
Administrative Law Judge

September 8, 2023
Decision Dated and Mailed

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NOTE TO MS. HIGENS:

- As of September 7, 2023, the total overpayment you owe to IWD is \$5,384.25
- If you were unemployed between February 2, 2020, and June 12, 2021 because of the COVID-19 pandemic, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. PUA benefits are federal UI benefits available to people who were unemployed, partially unemployed, or unable to work due to the COVID-19 pandemic. **You must apply for PUA benefits to determine your eligibility under the program.**
- To apply for PUA benefits:
 - First go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>
 - Scroll down to the "WHAT TO EXPECT FROM THE HEARING" section.
 - Go to the last two sentences in this section.
 - The PUA application link is at the end of the second-to-last sentence of the section.
 - The reference number/authorization number, if needed, is: 108053.
- **If IWD finds you eligible for federal PUA benefits, you can use the PUA benefits to pay off the \$5,384.25 REGULAR (state) UI overpayment.**
- **If you do not apply for and/o if IWD does not approve you for PUA, you may be required to repay the \$5,384.25 overpayment.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **But you can still apply for PUA benefits at the link above if you were unemployed or your hours were reduced because of the COVID-19 pandemic between February 2, 2020, and June 12, 2021.**
- To check on your PUA application contact IWD by phone, email, or online.
 - Phone: 1-866-239-0843
 - Email: uicclaimshelp@iwd.iowa.gov
 - Online: Go to www.iowaworkforce.gov, click on "Contact Us" then click on "Unemployment Help Request" and complete the form.

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
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 adquiera 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.