

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JAYDON H BULS**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-04304-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

**STATEMENT OF THE CASE:**

Jaydon H Buls, the claimant/appellant, filed an appeal from the January 25, 2022 (reference 08) unemployment insurance (UI) decision that concluded he was overpaid Lost Wage Assistance Payments (LWAP) benefits in the gross amount of \$1,500.00. The parties were properly notified about the hearing. A telephone hearing was held on March 21, 2022. Mr. Buls participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Mr. Buls' appeal filed on time?  
Has Mr. Buls been overpaid LWAP benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Buls at the address of record on January 25, 2022. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by February 4, 2022. Mr. Buls received the decision on February 5. Mr. Buls had moved and had notified the United States Postal Service of his new address. Mr. Buls filed an appeal online on February 8, 2022. The appeal was received by Iowa Workforce Development on February 8, 2022.

The administrative law judge further finds: Mr. Buls filed an initial claim for REGULAR (state) UI benefits effective March 29, 2020. Mr. Buls received REGULAR UI benefits on his claim. Mr. Buls also received LWAP benefits in the gross amount of \$1,500.00 for five weeks between July 26, 2020 and August 26, 2020.

The Lost Wage Assistance Program was created by presidential Executive Order 8, signed on August 8, 2020. To receive LWAP benefits in any given week, a claimant must be eligible to receive at least \$100.00 in unemployment benefits per week, and the individual must self-certify that he or she is unemployed or partially unemployed as a result of the COVID-19 pandemic.

Almost one year after he filed his initial claim, and had already received REGULAR UI benefits, and LWAP benefits IWD issued a reference 01 decision finding Mr. Buls not eligible for REGULAR UI benefits. Mr. Buls appealed the decision to the Iowa Workforce Development Appeals Bureau. The administrative law judge's decision in Appeal 22A-UI-04301-DZ-T affirmed the reference 01 decision.

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

For the reasons that follow, the administrative law judge concludes Mr. Buls' appeal of the reference 08 decision was 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:

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 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).

Mr. Buls did not receive the reference 08 decision before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was

invalid. Mr. Buls filed his appeal within 10 days of him receiving the decision. Mr. Buls's appeal was filed on time.

The administrative law judge further concludes: Mr. Buls has been overpaid LWAP benefits.

Iowa Code §96.3(7) provides, in pertinent part:

*7. Recovery of overpayment of benefits.*

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because Mr. Buls is disqualified from receiving REGULAR UI benefits, he is also disqualified from receiving LWAP benefits. The administrative law judge concludes that Mr. Buls has been overpaid LWAP benefits in the gross amount of \$1,500.00 for five weeks from July 26, 2020 through August 26, 2020, which should be repaid.

**DECISION:**

Mr. Buls' appeal of the reference 08 decision was filed on time. The January 25, 2022, (reference 08) decision is AFFIRMED. Mr. Buls has been overpaid LWAP benefits in the gross amount of \$1,500.00, which must be repaid.



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

March 31, 2022  
Decision Dated and Mailed

dz/scn

**NOTE TO MR. BULS:**

- This decision determines you have been overpaid LWAP benefits, and the administrative law judge does not have authority to waive the overpayment.
- 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.
- **You may also request a waiver of this overpayment by filing an appeal to the EAB.**