

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLAS G WAMSHER
Claimant

APPEAL 22A-UI-07173-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/31/20
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.5(8) – Administrative Penalty
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud
Iowa Admin. Code r. 871-25.9 – Administrative Penalties

STATEMENT OF THE CASE:

Nicholas G Wamsher, the claimant/appellant, filed an appeal from the March 10, 2022, (reference 04) unemployment insurance (UI) decision that concluded he was overpaid Lost Wage Assistance Payments (LWAP) benefits in the gross amount of \$1,200.00. Iowa Workforce Development (IWD) also imposed a 15 percent administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on May 6, 2022. Mr. Wamsher participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Wamsher's appeal filed on time?
Has Mr. Wamsher been overpaid LWAP benefits?
Were the penalties properly imposed?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Wamsher at the correct address on March 10, 2022. The decision states that it becomes final unless an appeal is postmarked or received by IWD Appeals Section by March 20, 2022. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. March 20, 2022 was a Sunday; therefore, the deadline was extended to Monday, March 21, 2022.

Mr. Wamsher was out of town from March 11 through March 19. Mr. Wamsher received the UI decision in the mail on Saturday, March 19. IWD issued two additional decisions on March 10, 2022 finding Mr. Wamsher was overpaid REGULAR (state) UI benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits, and adding a 15 percent penalty for the FPUC

benefit overpayment due to misrepresentation. Mr. Wamsher also received those decisions in the mail on Saturday, March 19. On Monday, March 21, Mr. Wamsher called IWD. The IWD representative told Mr. Wamsher that he could appeal the UI decision but did not explain the decision. Mr. Wamsher called IWD again on Tuesday, March 22. That IWD representative explained to Mr. Wamsher how to file the appeal online. Mr. Wamsher filed an appeal online on March 22, 2022. The appeal was received by the Appeals Bureau of Iowa Workforce Development on March 22, 2022.

Mr. Wamsher applied for Pandemic Unemployment Assistance (PUA) benefits on January 14, 2021. IWD has not issued a decision on Mr. Wamsher's PUA eligibility.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Wamsher's appeal of the March 10, 2022, (reference 04) 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).

Mr. Wamsher received the reference 04 UI decision before the deadline and, therefore, could have filed an appeal on the appeal deadline. The notice provision of the decision was valid. Mr. Wamsher's delay in filing his 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 his appeal. Mr. Wamsher's appeal of the reference 04 UI decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Mr. Wamsher's appeal of the reference 04 UI decision was not filed on time. The March 10, 2022, (reference 04) UI decision is AFFIRMED.



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

May 25, 2022
Decision Dated and Mailed

dz/kmj

NOTE TO MR. WAMSHER:

- 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.**