

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON C KRUSE
Claimant

APPEAL 21A-UI-12193-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) - Overpayment
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On May 10, 2021, Brandon Kruse (claimant/appellant) filed an appeal from the January 29, 2021 (reference 07) unemployment insurance decision that determined claimant was overpaid Lost Wage Assistance Payments (LWAP) in the amount of \$1,800.00 for the six-week period ending September 5, 2020.

A telephone hearing was held on July 26, 2021. The parties were properly notified of the hearing. Claimant participated personally. Claimant's mother, Michele Kruse, participated as a witness. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the claimant overpaid LWAP?
- II. Is the appeal timely?

FINDINGS OF FACT:

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

Claimant received LWAP in the amount of \$300.00 per week for a total of six weeks, from the benefit week ending August 1, 2020 and continuing through the benefit week ending September 5, 2020. The total amount of LWAP paid during his period is \$1,800.00. Claimant was paid LWAP based on his receipt of PUA. Claimant was subsequently denied PUA. That decision has now been affirmed. See 21A-UI-12192-AD-T.

The Unemployment Insurance Decision was mailed to claimant at the above address on January 29, 2021. That was claimant's correct address at that time. Claimant received the decision in early February 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 8, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Claimant did file an appeal on February 5, 2021. However, the Appeals Bureau did not set up an appeal on that issue. It instead set hearings on claimant's disqualification from regular, state unemployment insurance benefits and related overpayments. Claimant was unaware this was the case until after the hearing on those matters. He therefore appealed again at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The January 29, 2021 (reference 07) unemployment insurance decision that determined claimant was overpaid Lost Wage Assistance Payments (LWAP) in the amount of \$1,800.00 for the six-week period ending September 5, 2020 is AFFIRMED.

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 administrative law judge finds claimant did appeal in a timely manner. Any delay was due to agency error misinformation. As such the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 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.


The Lost Wage Assistance Program was created by Executive Order 8, signed by President Trump on August 8, 2020. To receive LWAP 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.

Claimant received LWAP in the amount of \$300.00 per week for a total of six weeks, from the benefit week ending August 1, 2020 and continuing through the benefit week ending September 5, 2020. The total amount of LWAP paid during his period is \$1,800.00. Claimant was paid LWAP based on his receipt of PUA. Claimant was subsequently denied PUA. That decision has now been affirmed. See 21A-UI-12192-AD-T.

Because claimant was ineligible for PUA and his receipt of PUA was based on his PUA eligibility, he has been overpaid LWAP in the amount of \$1,800.00. No penalty shall be imposed. However, while the administrative law judge is sympathetic to claimant's situation, he is still responsible for repaying the above amount. There is no exception in the law for an overpayment in this instance, even where - as here - claimant acted in good faith and was not otherwise at fault.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The January 29, 2021 (reference 07) unemployment insurance decision that determined claimant was overpaid Lost Wage Assistance Payments (LWAP) in the amount of \$1,800.00 for the six-week period ending September 5, 2020 is AFFIRMED.



Andrew B. Duffelmeyer
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July 30, 2021
Decision Dated and Mailed

abd/mh