

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALYSON N HECKMAN
Claimant

APPEAL 21A-UI-24385-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/21/20
Claimant: Appellant (1)**

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Alyson N Heckman, the claimant/appellant, filed an appeal from the September 13, 2021, (reference 04) unemployment insurance (UI) decision that concluded she was overpaid Lost Wage Assistance Payments (LWAP) benefits in the gross amount of \$1,800.00. The parties were properly notified about the hearing. A telephone hearing was held on December 30, 2021. Ms. Heckman participated and testified. Anna Toohey, Ms. Heckman's mother testified in Ms. Heckman's favor. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Heckman's appeal filed on time?
Has Ms. Heckman 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 Ms. Heckman at the correct address on September 13, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by September 23, 2021.

Ms. Heckman received the decision in the mail on October 31, 2021. Ms. Heckman called IWD and the representative told her that she could file an appeal. Ms. Heckman filed an appeal online on November 1, 2021. That appeal was received by Iowa Workforce Development on November 1, 2021.

The administrative law judge further finds: Ms. Heckman filed an initial claim for REGULAR UI benefits effective June 21, 2020. She filed weekly claims from June 21, 2020 through October 10, 2020, and for the week ending January 16, 2021.

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.

Over four months after she filed her initial claim, and had already received REGULAR UI benefits, IWD issued a reference 01 decision finding Ms. Heckman not eligible for REGULAR UI benefits. Ms. Heckman appealed the decision to the Iowa Workforce Development Appeals Bureau. The administrative law judge's decision in Appeal 21A-UI-24382-DZ-T, affirmed the reference 01 decision.

Ms. Heckman had received REGULAR UI benefits in the gross amount of \$2,355.00 for 15 weeks between June 21, 2020 and October 3, 2020. Ms. Heckman had also received LWAP benefits in the gross amount of \$1,800.00 for 6 weeks between July 26, 2020 and September 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Heckman's appeal of the reference 04 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).

Ms. Heckman did not receive the reference 04 decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Ms. Heckman filed an appeal the day after she received the decision. Ms. Heckman's appeal was filed on time.

The administrative law judge further concludes Ms. Heckman 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.

Since Ms. Heckman is not eligible for REGULAR UI benefits, she is not eligible for LWAP benefits. Ms. Heckman has been overpaid LWAP benefits in the gross amount of \$1,800.00 for 6 weeks between July 26, 2020 and September 5, 2020, which should be repaid.

DECISION:

Ms. Heckman's appeal was filed on time. The September 13, 2021 (reference 04) 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

January 27, 2022
Decision Dated and Mailed

dz/mh

NOTE TO MS. HECKMAN:

- 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.