

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU

CHRISTOPHER A. WARD
Claimant

FRANK RIEMAN MUSIC
Employer

APPEAL 22A-UI-07528-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2R)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment – Lost Wages Assistance Program
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.5(5)-Compensation
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On March 29, 2022, the claimant/appellant filed an appeal from the March 11, 2022, (reference 05) unemployment insurance decision that concluded the claimant was overpaid Lost Wage Assistance Program (LWAP) benefits in the amount of \$600.00 as a result of incorrectly reported wages decision. A telephone hearing was scheduled to be held on May 10, 2022. The employer requested a subpoena. As a result the hearing was postponed. After proper notice the hearing was held June 8, 2022. The hearing was held together with appeals 22A-UI-07525-CS-T and 22A-UI-07526-CS-T, and combined into one record. The claimant participated. The employer participated through Matthew Hulscher. Administrative notice was taken of the claimant's unemployment insurance benefits records. Exhibits 1, 2, 3, 4, and D-1 were admitted into the record.

ISSUES:

- I. Is claimant's appeal timely?
- II. Is claimant totally, partially or temporarily unemployed?
- III. Was the claimant overpaid Federal Pandemic Unemployment Compensation (FPUC)?
- IV. Did the claimant correctly report wages earned?
- V. Was the claimant was overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on March 11, 2022. The appellant did not receive the decision until March 27, 2022. The appeal was filed on March 29, 2022.

Claimant filed an initial claim for unemployment insurance benefits effective March 22, 2020. Claimant's weekly benefit amount was \$518.00. (DBIN). Claimant is an educational consultant for employer. Prior to the COVID pandemic claimant worked an average of 40 hours per week. Claimant earned an annual salary. Employer closed due to Covid-19 governor's mandate and claimant was laid off from work. The employer qualified for a Pandemic Paycheck Protection Loan and claimant returned to work for a period of time. Claimant's hours were reduced again when the PPP loan was depleted. When claimant worked reduced hours he was paid \$25.00 an hour by the employer instead of his normal salary.

For the week of July 5, 2020, through July 11, 2020, claimant worked eleven hours. Claimant did not receive payment for this week. Claimant reported that he earned \$275.00 for the week when he filed for benefits. Claimant received a reduced benefit of \$372.00 for the week ending July 11, 2020.

For the week of July 12, 2020, through July 18, 2020, claimant worked eighteen and a one-half hours. Claimant was not paid for his time. Claimant reported that he earned \$462.00 for the week when he filed for benefits. Claimant received a reduced benefit of \$185.00.

For the week of July 19, 2020, through July 25, 2020, claimant worked six hours. Claimant earned \$129.00 for the week. Claimant reported that he earned \$150.00 for the week when he filed for benefits. Claimant received a reduced benefit of \$497.00.

For the week of July 26, 2020, through August 1, 2020, claimant worked twenty-one and a one-half hours. Claimant earned \$465.00 for the week. Claimant reported that he earned \$537.00 for the week when he filed for benefits. Claimant did not receive a weekly benefit for this week.

For the week of August 2, 2020, through August 8, 2020, claimant worked fifteen and a one-half hours. Claimant earned \$387.50 for the week. Claimant reported that he earned \$387.00 for the week when he filed for benefits. Claimant received a reduced benefit of \$260.00 for the week.

For the week of August 9, 2020, through August 15, 2020, claimant worked thirty-five hours. Claimant earned \$875.00 for the week. Claimant reported that he earned \$875.00 for the week.

when he filed for benefits. Claimant did not receive benefits this week due to making excessive wages.

For the week of August 16, 2020, through August 22, 2020, claimant worked thirteen and a one-half hours. Claimant earned \$337.50 for the week. Claimant reported that he earned \$337.00 for the week when he filed for benefits. Claimant received a reduced benefit of \$310.00 for the week.

Claimant received Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$1,800.00 for the three weeks between July 5, 2020, through July 25, 2020.

Iowa Workforce Development sent a Request of Wage Records to the employer on January 13, 2021. (Exhibit D-1). The employer representative testified the request of wage records document is incorrect and does not reflect the actual wages earned by claimant from July 5, 2020, through September 5, 2020.

The issue of total, partial, and temporary unemployment, whether claimant correctly reported his wages and whether claimant is entitled to state unemployment benefits has been decided in appeal 22A-UI-07525-CS-T and will not be addressed again in this decision.

The administrative law judge found in appeal 22A-UI-07525-CS-T claimant was eligible for benefits for the weeks ending August 1, 2020, August 8, 2020, and August 22, 2020.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases

involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant filed the appeal within two days of receipt. Therefore, the appeal shall be accepted as timely.

Next it must be determined if claimant was overpaid LWAP benefits. For the reasons stated below the administrative law judge finds claimant was not overpaid LWAP benefits.

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

The administrative law judge concludes claimant has been overpaid benefits for the period in question.

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.

The decision that denied claimant regular unemployment insurance benefits has been modified in favor of claimant. Claimant has been found eligible for benefits for the weeks ending August 1, 2020, August 8, 2020, and August 22, 2020. Because claimant is eligible for regular UI benefits, claimant is also eligible for LWAP benefits. Therefore, claimant has not received LWAP benefits to which he was not entitled. The administrative law judge concludes that the claimant has not been overpaid LWAP benefits.

DECISION:

The appeal is timely. The March 11, 2022 (reference 05) decision is REVERSED. Claimant has been not been overpaid LWAP benefits in the amount of \$600.00.

REMAND:

The issue of claimant being eligible for LWAP benefits for the week ending August 1, 2020 is remanded to the Benefits Bureau for payment.



Carly Smith
Administrative Law Judge

August 18, 2022
Decision Dated and Mailed

cs/mh

Note to Claimant:

This decision determines you have been overpaid LWAP benefits. 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 find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

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.