

IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

**Appeal Number:** 13IWDUI365  
**OC:** 12/23/12  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**BRENDA JENKINS**  
**1121 SMITH ST.**  
**BURLINGTON, IA 52601**

**IOWA WORKFORCE DEVELOPMENT**  
**KAREN VON BEHREN, INVESTIGATOR**

TERESA HILLIARY, IWD  
JONI BENSON, IWD

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department. 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

September 3, 2013

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(Dated and Mailed)

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Iowa Code section 96.6-2 – Timeliness of Appeal  
Iowa Code section 96.3-7 – Recovery of Overpayment Benefits

**STATEMENT OF THE CASE**

On July 26, 2013, Claimant/Appellant Brenda Jenkins filed an appeal of a decision issued by Iowa Workforce Development (“IWD”) on May 15, 2013, reference 01, finding she received a net overpayment of \$224 because she incorrectly reported wages received from American Ordnance.

On July 31, 2013, IWD transmitted the case to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the case, it

mailed a copy of the administrative file to Jenkins. Prior to the hearing Investigator Karen von Behren submitted additional exhibits and provided a copy to Jenkins.

On September 3, 2013, a telephone hearing was held before Administrative Law Judge Heather L. Palmer. Jenkins did not appear as directed by the Notice of Telephone Hearing. von Behren appeared and testified on behalf of IWD. Exhibits 1 through 8 were admitted into the record.

### **ISSUES**

Whether the Claimant filed a timely appeal.

Whether IWD correctly determined that the Claimant was overpaid unemployment benefits and, if so, whether the overpayment was correctly calculated.

### **FINDINGS OF FACT**

Jenkins received unemployment benefits in 2012. IWD conducted an audit of Jenkins' case after learning she had received wages while she was receiving unemployment benefits. IWD concluded Jenkins received an overpayment.

On May 15, 2013, IWD issued a decision, reference 01, finding Jenkins received a net overpayment of \$224 because she incorrectly reported wages earned with American Ordnance. The decision states, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY May 25, 2013, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 6).

Jenkins filed her appeal on July 26, 2013. Jenkins did not report she did not receive a copy of the decision in May 2013. The decision, reference 01, was mailed to the same address listed on Jenkins' appeal, Exhibit 7. In her appeal, Jenkins did not provide any explanation why she failed to file her appeal by May 25, 2013. Jenkins did not attend the hearing to provide any further explanation.

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

Iowa Code section 96.6(2) requires a claimant to file an appeal of a representative's decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.<sup>1</sup>

Jenkins had until May 25, 2013 to file her appeal. Jenkins filed her appeal on July 26, 2013. The decision, reference 01, warned Jenkins the decision would become final unless an appeal was postmarked or received by the IWD Appeals Section by May 25, 2013. Jenkins' appeal was untimely. Because Jenkins failed to timely appeal the decision, reference 01, I do not have jurisdiction to consider whether IWD correctly

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<sup>1</sup> *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979).

determined Jenkins was overpaid unemployment benefits and whether the overpayments were correctly calculated.

### **DECISION**

Jenkins failed to timely appeal the May 15, 2013 decision, reference 01. The decision concluding she received an overpayment and the amount of the overpayment is affirmed.

hlp