

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

**Appeal Number: 10-IWDUI-258**

**OC: 2/8/09**

**Claimant: Appellant (6)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**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 Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>TH</sup> 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.

**HUONG NGUYEN  
5318 SE 25TH STREET  
DES MOINES, IA 50320-2720**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATIONS AND RECOVERY  
150 DES MOINES STREET  
DES MOINES IA 50309**

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.

DAN ANDERSON, IWD

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(Administrative Law Judge)

October 29, 2010

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(Decision Dated & Mailed)

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## STATEMENT OF THE CASE

Huong Nguyen filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated June 25, 2010, reference 05. In this decision, the Department determined that Mr. Nguyen was overpaid \$2,958 in unemployment insurance benefits between September 27, 2009 and December 12, 2009. The decision stated that the overpayment resulted from the claimant failing to report or incorrectly reporting wages from the Des Moines Register.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 18, 2010 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on September 9, 2010. On September 24, 2010, a telephone hearing was held before Administrative Law Judge Laura Lockard. Investigator Irma Lewis represented the Department and presented testimony. The Department submitted Exhibits A through H which were admitted into

the record as evidence. Pursuant to the appellant's request in his appeal letter, arrangements were made for a Vietnamese interpreter to be present at the hearing. The appellant did not appear for the hearing.

### **ISSUE**

1. Whether the appellant filed a timely appeal.
2. Whether the Department correctly determined that the appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.
3. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

### **FINDINGS OF FACT**

The Department's decision that is being appealed was issued on June 25, 2010. The decision states that it becomes final unless an appeal is postmarked by July 5, 2010 or received by the Department's appeals section on that date.

Huong Nguyen mailed a letter of appeal to the Department that was postmarked July 24, 2010. The Department received the letter on July 26, 2010.

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

Iowa Code section 96.6(2) requires that an appeal of a representative's decision must be filed by a claimant or other interested party "after notification or 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>

Mr. Nguyen's appeal was filed more than 10 days after the Department's decision was mailed to him at his last known address. The appeal was not timely. Mr. Nguyen is therefore foreclosed from challenging the decision. Since Mr. Nguyen's appeal was not filed timely, I do not have jurisdiction to consider whether the Department was correct in assessing an overpayment and in determining that the overpayment was due to misrepresentation.

### **DECISION**

The appellant's appeal is dismissed as untimely. The Department shall take any action necessary to implement this decision.

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<sup>1</sup> *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).