

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

Appeal Number: 16IWDUI061-063
OC: 6/7/15
Claimant: Appellant (6)

STATE CLEARLY

DECISION OF THE ADMINISTRATIVE LAW JUDGE

EDWARD FOWLER
1804 E MILWAUKEE AVENUE
APT 119
STORM LAKE, IA 50588

IOWA WORKFORCE DEVELOPMENT
KEVIN WEY, INVESTIGATOR

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.

(Administrative Law Judge)

April 21, 2016

(Decision Dated & Mailed)

STATEMENT OF THE CASE:

Edward Fowler appealed from three unemployment insurance decisions. One decision dated December 10, 2015 reference 06 concluded that Fowler was not eligible to receive unemployment insurance benefits because he voluntarily quit work on August 16, 2015. One decision dated December 10, 2015 reference 07 concluded that Fowler was overpaid \$1466 in unemployment benefits from July 26, 2015 and August 22, 2015. One decision dated December 10, 2015 reference 08 concluded that Fowler was overpaid unemployment insurance benefits in the amount of \$6482.78 from August 16, 2015 through December 5, 2015.

A notice of hearing was mailed to Fowler at 1804 E Milwaukee Avenue, Apt 119, Storm Lake, Iowa 50588 for a telephone hearing to be held at 2:00 p.m. on March 21, 2016. Fowler was not available at the telephone number provided for the hearing and did not participate in the hearing. Kevin Wey, an investigator with IWD, and Diane Boudreaux of Blackhawk Oil Services, did telephone into the hearing and were available to testify.

The Department included each Notice of Decision as well as an appeal summary and Exhibit D-1-D-4 as part of the record on appeal.

ISSUES:

Should the appeal be dismissed based upon the claimant not participating in the hearing?

Should the appeal be dismissed as untimely?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The claimant was not available at the telephone number provided for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

Kevin Wey of Iowa Workforce Development appeared by telephone and was available to participate in the hearing. Diane Boudreaux of Blackhawk Oil Services also appeared by telephone. The representative's decision concluded that the claimant was ineligible to receive unemployment benefits and that he was overpaid unemployment insurance benefits. The decisions are each dated December 10, 2015.

On December 10, 2015, IWD issued three separate decisions. Each decision states, in part:

“THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 12/20/15, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.” (Decisions 12-10-15).

Fowler's appeal was received by the Appeals section on January 26, 2016. He attached an Overpayment Statement dated January 16, 2016 in which the Department demanded \$7,948.78 in overpayment (Appeal Letter 1-26-16).

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.¹

The decision dated December 10, 2015 states: **“THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 12/20/15, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.”** Fowler's appeal was received January 26, 2016. He appears to have attempted to appeal the overpayment statement rather than the underlying decisions. Because Fowler's appeal was untimely, the undersigned does not have jurisdiction to consider the merits of his appeal.

Fowler also defaulted on his appeal rights by failing to participate in the appeal.

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

Because this appeal is dismissed as untimely, this issue has not been addressed.

DECISION

IWD's decision dated December 10, 2015 reference 06, decision dated December 10, 2015 reference 07, and decision dated December 10, 2015 reference 08 are affirmed.