

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

Appeal Numbers: 11IWDUI120-121
OC: 11/21/10
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MARTIN YANEZ
480 FRONT ST. APT. 16
SALINAS, CA 93901-3624

INVESTIGATIONS AND RECOVERY, IWD
ATTN: IRMA LEWIS
150 DES MOINES ST.
DES MOINES, IA 50309

JOE WALSH, 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.

(Administrative Law Judge)

June 27, 2011

(Dated and Mailed)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.4-3 – Eligibility for Benefits
Iowa Code § 96.3-7 – Recovery of Overpayment Benefits

STATEMENT OF THE CASE

On March 11, 2011, Claimant Martin Yanez filed an appeal from two decisions issued by Iowa Workforce Development (“IWD”) on January 14, 2011, reference 01, and January 19, 2011, reference 02. In reference 01, IWD found Yanez was not eligible to receive unemployment insurance benefits because IWD’s records found that Yanez was not the individual who worked under the given social security number for the company CV Insulation. In reference 02, IWD concluded Yanez received a \$2,982 overpayment for

the seven weeks between November 21, 2010 and January 8, 2011, due to a redetermination, which made his claim ineligible because he lacked qualifying earnings.

IWD transmitted the cases to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the appeal files to Yanez. A contested case hearing was scheduled for June 27, 2011 at 8:00 a.m.

On June 27, 2011, a telephone hearing was held before Administrative Law Judge Heather L. Palmer. Irma Lewis appeared and testified on behalf of IWD. Yanez did not appear, and did not follow the instructions on the Notice of Telephone Hearing. I waited five minutes before proceeding with the hearing, but Yanez did not appear. Documents 1 through 15 were admitted into the record.

ISSUES

Whether the Claimant filed a timely appeal.

Whether IWD correctly determined the claimant is ineligible to receive unemployment insurance benefits.

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

FINDINGS OF FACT

Yanez applied for unemployment insurance benefits. IWD received information from CV Insulation that the individual who worked for them was not Yanez, but a man named Nelson Islas-Hernandez. At one time, Islas-Hernandez was using the identity of Yanez. Islas-Hernandez signed a statement reporting he worked illegally under Yanez' social security number.

IWD concluded Yanez was not eligible to receive unemployment insurance benefits because IWD's records found that Yanez was not the individual who worked under the given social security number for the company CV Insulation. IWD further concluded Yanez received a \$2,982 overpayment for the seven weeks between November 21, 2010 and January 8, 2011, due to a redetermination, which made his claim ineligible because he lacked qualifying earnings. Yanez appealed the decisions, reference 01, dated January 14, 2011, and reference 02, dated January 19, 2011, on March 11, 2011.

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

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

The decision dated January 14, 2011, reference 01, states, in part, “THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 01/24/11, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.” (Document 6). Yanez did not appeal the decision until March 11, 2011. Yanez did not provide any reason why he failed to appeal the decision by January 24, 2011. He did not appear at hearing to explain his position. Yanez’ appeal was untimely.

The decision dated January 19, 2011, reference 02, states, in part, “THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 01/29/11, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.” (Document 9). Yanez did not appeal the decision until March 11, 2011. Yanez did not provide any reason why he failed to appeal the decision by January 29, 2011. He did not appear at hearing to explain his position. Yanez’ appeal was untimely.

DECISION

Yanez failed to file a timely appeal. The representative’s decisions that Yanez is ineligible to receive unemployment insurance benefits, and that he received a \$2,982 overpayment are affirmed.

hlp