

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**RANDY J METCALF**  
Claimant

**APPEAL NO. 15A-UI-11032-ECT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/11/15  
Claimant: Respondent (6)**

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Iowa Code §96.4(3) – Able and Available for Work  
Iowa Admin. Code r. 871-26.14(b) – Appeal Involving Iowa Workforce Development Department  
Iowa Admin. Code r. 871-26.14(c) – Appeal Involving Issue of Fraudulent Overpayment and Administrative Penalty

**STATEMENT OF THE CASE:**

This matter, which is connected to a companion case involving an issue of fraudulent overpayment and administrative penalty, in which an Iowa Workforce Development (IWD) employee requested the right to participate, was erroneously set up as an appeal with an administrative law judge (ALJ) employed by Iowa Workforce Development. A hearing was scheduled with an IWD ALJ on Monday, October 19, at 10:00 a.m. This hearing is canceled. The matter should have been transmitted to be scheduled and heard by an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals.

**ISSUE:**

Was this matter erroneously set up as an appeal hearing with an IWD ALJ?

Should the appeal be transmitted to DIA AHD to be scheduled with an ALJ employed by that agency?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, and all the evidence available in the administrative file, the administrative law judge finds: This matter was erroneously set up for hearing with an ALJ employed by IWD. The IWD representative's interrelated decision, dated 09/25/15, reference 03, noted an overpayment in the amount of \$2440.00 for an eight-week period, and added a 15% penalty due to misrepresentation. The fraudulent overpayment decision and administrative penalty assessment was based on the IWD representative's decision, dated 09/25/15, reference 02, which found that the claimant was not able and available for work.

Furthermore, an Iowa Workforce Development (IWD) employee requested the right to participate in the hearing, offer testimony and exhibits, and cross-examine witnesses for other parties.

This appeal should have been transmitted to the administrative hearings division (AHD) of the department of inspections and appeals (DIA) to be scheduled with an ALJ employed by that state agency. This decision is intended to rectify and correct that error.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that this matter was erroneously set up and scheduled for hearing with an IWD ALJ. This decision cancels the hearing scheduled with an IWD ALJ. A new hearing will be scheduled with an ALJ employed by DIA AHD, in accordance with the applicable rules.

In accordance with the plain language of Iowa Admin. Code r. 871-26.14(1), each contested case hearing shall be heard and decided by a presiding officer who is an administrative law judge. All contested case hearings in which the department of workforce development is a party shall be heard and decided by an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals. Iowa Workforce Development is a party to contested case hearings involving fraudulent overpayment and administrative penalty in which IWD or any IWD employee requests the right to participate in the hearing by offering testimony and cross-examining witnesses for other parties.

This appeal falls under this rule, as it is closely related to a corresponding decision which involves a fraudulent overpayment and an administrative penalty. An IWD employee requested the right to actively participate in the hearing for both IWD representative decisions. Therefore, in accordance with the governing administrative rule, the appeal must be transmitted to be heard and decided by an administrative law judge employed by the division of administrative hearings of the department of inspections and appeals.

**DECISION:**

The appeal from the September 25, 2015 (reference 02) decision, erroneously set up and scheduled with an IWD ALJ, is dismissed without prejudice. The hearing scheduled on October 19, 2015 at 10:00 a.m. is canceled. The appeal shall immediately be transmitted to the division of administrative hearings of the department of inspections and appeals to be scheduled with an ALJ employed by that state agency, as required by Iowa Administrative Code rule 871-26.14(1)b and 871-26.14(1)c. The representative's decision remains in full force and effect, pending the hearing and decision by the DIA AHD ALJ.

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Emily Gould Chafa  
Administrative Law Judge

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Decision Dated and Mailed

ec/pjs