

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

Appeal Numbers: 13IWDUI340-341
OC: 1/27/13
Claimant: Appellant (1)

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, 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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DARIEL TORAN
5123 HAWTHORNE DRIVE APT K
WEST DES MOINES, IA 50265

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
SHANLYN SEIVERT & RENALDO ELLIS

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.

TERESA HILLARY, IWD
JONI BENSON, IWD

(Administrative Law Judge)

September 10, 2013

(Decision Dated & Mailed)

Iowa Code section 96.6-2 – Timeliness of Appeal
871 IAC 24.6(6) – Reemployment Services
Iowa Code section 96.4-3 – Eligibility for Benefits
Iowa Code section 96.3-7 – Recovery of Overpayment Benefits

STATEMENT OF THE CASE

Claimant/Appellant Dariel Toran appealed two decisions issued by Respondent Iowa Workforce Development (“IWD”). In reference 05, dated June 14, 2013, IWD found Toran was not eligible to receive unemployment insurance benefits as of April 21, 2013 because Toran was mailed a notice to report to attend reemployment services orientation on April 22, 2013 and Toran failed to report. In reference 06, dated June 20, 2013, IWD found Toran was overpaid \$1,995 in unemployment insurance benefits for seven weeks between April 21, 2013 and June 8, 2013 because Toran failed to report for reemployment services and Toran was disqualified by the decision dated June 14, 2013.

On July 11, 2013, 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 Toran. A Notice of Telephone Hearing was mailed to all parties on July 15, 2013, scheduling a contested case hearing for August 20, 2013.

A contested case hearing was held on August 20, 2013. Toran did not appear. No one appeared on behalf of IWD. Because the overpayment issue was identified on the original Notice of Telephone Hearing, a new Notice of Telephone Hearing was issued scheduling a hearing for September 10, 2013 at 8:00 a.m. Toran did not appear at the hearing on September 10, 2013. No one appeared on behalf of IWD. I took official notice of the documents in the administrative appeal file.

ISSUES

Whether the claimant filed a timely appeal.

Whether IWD correctly determined the claimant did not establish justifiable cause for failing to participate in reemployment services.

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

IWD operates a reemployment services program for individuals receiving unemployment insurance benefits. The purpose of the program is to assist unemployed individuals in finding employment. IWD randomly selects individuals to appear and participate in the program.

IWD scheduled Toran to attend reemployment services on April 22, 2013. Toran did not attend. In Toran's appeal letter Toran stated Toran called IWD on April 19, 2013 and Toran told the representative Toran had found a job starting in June. Toran was uncertain if Toran needed to attend the class.

On June 14, 2013, IWD issued the decision, reference 05, finding Toran was not eligible for unemployment insurance benefits effective April 21, 2013 because Toran was mailed a notice to report to attend reemployment services orientation on April 22, 2013 and Toran failed to report. Toran reports in Toran's appeal letter that Toran called IWD and reported Toran did not receive the papers indicating when Toran was scheduled for class. Toran's appeal letter acknowledges Toran received the decision, reference 05.

IWD issued a second notice on June 20, 2013, reference 06, finding Toran had received a \$1,995 overpayment for seven weeks between April 21, 2013 and June 8, 2013 because

Toran failed to report for reemployment services and Toran was disqualified by the decision dated June 14, 2013.

Toran appealed both decisions. IWD received Toran's appeal on July 1, 2013.

REASONING AND CONCLUSIONS OF LAW

I. Timeliness of Appeals

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

Toran appealed two decisions. In reference 05, dated June 14, 2013, IWD found Toran was not eligible for unemployment insurance benefits effective April 21, 2013 because Toran was mailed a notice to report to attend reemployment services orientation on April 22, 2013 and Toran failed to report. In reference 06, dated June 20, 2013, IWD found Toran had received a \$1,995 overpayment for seven weeks between April 21, 2013 and June 8, 2013 because Toran failed to report for reemployment services and Toran was disqualified by the decision dated June 14, 2013.

The decision, reference 05, states, "[t]his decision becomes final unless an appeal is postmarked by 6/24/2013, or received by the Iowa Workforce Development Appeal Section by that date." Toran filed an appeal on July 1, 2013. Toran's appeal was untimely. Because Toran's appeal was untimely, I do not have jurisdiction to consider whether IWD properly determined Toran did not establish justifiable cause for failing to participate in reemployment services and whether Toran is disqualified from receiving unemployment insurance benefits effective April 21, 2013.

The decision, reference 06, states, "[t]his decision becomes final unless an appeal is postmarked by 06/30/13, or received by the Iowa Workforce Development Appeal Section by that date." Toran filed an appeal on July 1, 2013. Because July 1, 2013 was a Sunday, Toran's appeal was timely.

II. Overpayment

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.² IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.³

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

² Iowa Code § 96.3(7) (2011).

³ *Id.*

IWD issued a decision on June 14, 2013, reference 05, finding Toran was not eligible for unemployment insurance benefits effective April 21, 2013 because Toran was mailed a notice to report to attend reemployment services orientation on April 22, 2013 and Toran failed to report. Toran's appeal of reference 05 was untimely. Toran was not eligible for unemployment insurance benefits effective April 21, 2013. Toran continued to receive unemployment insurance benefits through June 8, 2013. Because Toran was not entitled to the benefits, IWD has established Toran received a \$1,995 overpayment. IWD's decision is affirmed.

DECISION

IWD's decisions dated June 14, 2013, reference 05, and June 20, 2013, reference 06, are **AFFIRMED**. Toran failed to timely appeal reference 05. IWD correctly found Toran was ineligible to receive unemployment insurance benefits as of April 21, 2013 because Toran failed to attend reemployment services orientation on April 22, 2013. Because Toran failed to timely appeal the June 14, 2013 decision, reference 05, disqualifying Toran from receiving benefits effective April 21, 2013, and Toran received benefits Toran was not entitled to, IWD correctly determined Toran received a \$1,995 overpayment.

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