

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

Appeal Number: 10-IWDUI-085
10-IWDUI-086

OC: 09/07/08

Claimant: Appellant (2)

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, 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.

**RONGFENG MAO
2413 ST. CLAIR AVENUE
WINDSOR ON CANADA N9E 9999**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209**

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

(Administrative Law Judge)

April 12, 2010

(Decision Dated & Mailed)

Iowa Code section 96.4-3 – Able and available to work
Iowa Code section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE

Rongfeng Mao appealed two representative's decisions. The first, dated February 11, 2010, reference 01, held Mao was not eligible to receive unemployment insurance benefits because he failed to provide proof that he is a citizen or legally authorized to work in the United States. The second decision, issued on February 25, 2010, reference 02, held Mao had been overpaid benefits in the amount of \$448 for the week beginning January 31, 2010 as a result of the initial decision that he was ineligible to receive benefits.

A telephone hearing was scheduled for April 8, 2010. Rongfeng Mao appeared and participated on his own behalf. Investigator Mary Piagentini appeared and represented Iowa Workforce Development. The documents contained in the administrative files for both cases were admitted into evidence.

At the outset of the hearing, Ms. Piagentini waived two issues which had been certified for hearing by IWD. Therefore, the parties did not address whether Mao had good cause for filing an untimely appeal or whether any overpayment of benefits was due to misrepresentation.

FINDINGS OF FACT

Rongfeng Mao applied for unemployment insurance benefits effective January 17, 2010. On January 25, 2010, Investigator Mary Piagentini sent Mao a *Notice to Report*. The document stated that, in order to be eligible for unemployment benefits, Mao needed to send a copy of his INS Work Authorization card, I-94, or other INS identification to Ms. Piagentini on or before February 3, 2010. The notice was mailed to Mao's address in Windsor, Ontario, Canada, however, the word "Canada" was not spelled out, but was abbreviated CA and the proper postal code was not included. Mao did not receive the document and did not send in his work authorization documents.

When she did not receive the requested proof of authorization to work in the United States, Piagentini caused a decision to be issued on February 11, 2010 holding that Mao was ineligible for benefits effective as of February 1, 2010. The decision was mailed to Mao at his address. On this document, the word "Canada" was spelled out completely and the entire postal code was printed. Mao received the document on February 26, 2010.

Once he received the decision he was ineligible for benefits, Mao immediately attempted to telephone the number provided on the decision ((866) 239-0843) to call with questions. He was unable to get through. On the following Monday, he tried telephoning a different number ((515) 281-5387). That time he reached an IWD employer named "Joanie" who advised him to fax in an appeal and a copy of his work authorization documents. Mao followed that advice and his appeal and work authorization documents were received by the Appeals section on March 1, 2010. In the meantime, the department issued a decision dated February 25, 2010 holding Mao was overpaid benefits in the amount of \$488 for the week beginning January 31, 2010 based on the previous decision holding he was ineligible to receive benefits at that time. Mao filed a second appeal from that decision which was not included in the administrative file.

CONCLUSIONS OF LAW

1. Eligibility and Disqualification

To be eligible to receive unemployment benefits, an unemployed individual must be able and available for work, and must be earnestly and actively seeking work.¹ An alien is disqualified from receiving benefits unless the individual was lawfully admitted for

¹ *Id.* § 96.4(3).

permanent residence at the time the services were performed, was lawfully present for the purpose of performing the services, or was permanently residing in the United States under color of law at the time the services were performed.² Under IWD's rules, "[a]n individual who is not lawfully authorized to work within the United States will be considered not available to work"³

IWD must ask each claimant at the time the claimant establishes a benefit year whether or not the claimant is a citizen.⁴ If the claimant answers "yes," no further proof is necessary and the claimant's records are marked accordingly.⁵ If the claimant answers "no," IWD shall request the claimant produce documentary proof of legal residency.⁶ "Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is brought to the local office."⁷ Under IWD's rules, "the citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 24.56(96), administrative penalties, and rule 871-25.10(96), prosecution on overpayments."⁸

Here, although IWD requested proof of Mao's status, it sent the request to an insufficient address. By abbreviated the word "Canada" to "CA" and not including a proper postal code, it is likely that the request was routed to California rather than Canada. Mao first knew IWD wanted a copy of his authorization documentation when he received the decision disqualifying him. That same day, Friday, February 26, 2010, he attempted to contact IWD but was unavailable to get through. The following Monday, he called a different number, reached an IWD employee who advised him to fax in an appeal and his documentation.

Mao immediately complied with the request to provide proof of his authorization to work in the United States as soon as he was aware IWD wanted the documents. Therefore, the decision holding him ineligible to receive benefits must be reversed.

2. 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 acts in good faith and is not otherwise at fault.⁹ 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.¹⁰

² *Id.* § 96.5(10).

³ 871 IAC 42.22(2)o.

⁴ *Id.* 24.60(2).

⁵ *Id.* 24.60(2)a.

⁶ *Id.* 24.60(2)b.

⁷ *Id.*

⁸ *Id.* 24.60(2)c.

⁹ Iowa Code § 96.3(7) (2009).

¹⁰ *Id.*

Here, because IWD's decision holding Mao ineligible to receive benefits is being reversed, there can be no overpayment of benefits and IWD's decision Mao was overpaid benefits in the amount of \$448 must also be reversed.

DECISION

The decision of Iowa Workforce Development dated February 11, 2010, reference 01, holding Rongfeng Mao in eligible to receive unemployment insurance benefits because he failed to provide proof he is legally authorized to work in the United States is **REVERSED**. Additionally, IWD's decision dated February 25, 2010, reference 02, holding Mao was overpaid benefits in the amount of \$448 is also **REVERSED**. The department shall take all steps necessary to implement this decision.

kka