

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JESUS LOPEZ
1316 BUCHANAN STREET
DES MOINES, IA 50316-3458

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
ATTN: IRMA LEWIS
430 EAST GRAND AVE.
DES MOINES, IA 50309

JOE WALSH, IWD

Appeal Number: 13IWDUI061-62

OC: 1/8/12

Claimant: Appellant (6)

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.

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)

April 16, 2013

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Jesus Lopez filed an appeal from two decisions issued by Iowa Workforce Development (the Department), both dated January 2, 2013. In the first decision, reference 01, the Department determined that Lopez was not available for work because he was out of town for personal reasons. The Department disqualified Lopez from receiving benefits effective December 16, 2012. In the second decision, reference 02, the Department disqualified Lopez from receiving unemployment insurance benefits because of a failure to report to his local Workforce Development center. In this decision, Lopez was disqualified effective December 30, 2012.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on January 30, 2013 to schedule a contested case hearing. A Notice of In-Person Hearing was mailed to all parties on February 5, 2013. On March

28, 2013, an in-person appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Irma Lewis represented the Department and presented testimony. Carmen Gomez from Iowa Workforce Development also testified for the Department. Exhibits A through H were submitted by the Department and admitted into the record as evidence. The Appellant was provided notice of the date, time, and place of hearing, but did not participate in the hearing. The hearing was held in his absence.

ISSUES

1. Whether the Appellant filed a timely appeal.
2. Whether the Department correctly determined that the claimant is ineligible to receive unemployment insurance benefits.¹

FINDINGS OF FACT

Jesus Lopez filed a claim for unemployment insurance benefits with an effective date of January 8, 2012. On January 1, 2013, the Department issued two decisions. In the first decision, the Department disqualified Lopez from receiving unemployment insurance benefits because of a determination that Lopez was out of town for personal reasons and therefore did not meet the availability requirements of the law. The disqualification was effective December 16, 2012. The decision states that it becomes final unless an appeal is postmarked or received by the Department by January 12, 2013. The decision also states that if the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. (Exh. B).

In the second decision, the Department disqualified Lopez for failing to report to his local Workforce Development center after having been mailed a notice to do so. Again, the Department asserts that as a result of this action Lopez does not meet the availability requirements of the law. This disqualification was effective December 30, 2012. Like the first decision, this decision states that it becomes final unless an appeal is postmarked or received by the Department by January 12, 2013. (Exh. C).

On January 17, 2013, Lopez filed a Notice of Appeal. In the appeal, he writes, "I never recieved [sic] a decision in the mail. Only found no payments being deposited. Please do an in person hearing." (Exh. A).

Both of the January 2, 2013 decisions were mailed to 1316 Buchanan Street, Des Moines, Iowa 50316. This is the same address that Lopez listed on his appeal. (Exh. A, B, C).

¹ A third issue was also listed on the Notice of Hearing: whether the Department correctly determined that the Appellant did not establish justifiable cause for failing to participate in reemployment services. The Department representative indicated at hearing that there was no decision by the Department made regarding reemployment services. This issue was listed in error and is therefore not addressed in the decision.

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 96.6(2) requires that an appeal of a representative's decision must be filed by a claimant or other interested party "after notification or within ten calendar days after notification was mailed to the claimant's last known address." The Department's regulations provide that the effective date of the appeal is established by either the postmark on the appeal or the date stamp.² The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.³

The evidence demonstrates that the appeal from Lopez was received at a local Workforce Development office on January 17, 2013. January 12, 2013, the due date for the appeal, was a Saturday. The appeal deadline, then, would have been extended to the next working day, which was Monday, January 14, 2013. Lopez's appeal was not filed until Thursday, January 17, 2013. Since the appeal was not filed timely, I do not have jurisdiction to consider whether the Department was correct in disqualifying Lopez from receiving unemployment insurance benefits.

DECISION

The Appellant's appeal is dismissed because it was not timely filed.

² 871 Iowa Administrative Code (IAC) 26.4(2).

³ *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).