

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

**Appeal Numbers:** 10-IWDUI-012  
10-IWDUI-043  
**OC:** 11-08-09  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**ILYA LITVIN  
1205 HIGHWAY 14  
KNOXVILLE, IA 50138-8860**

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

DAN ANDERSON, 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.

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(Administrative Law Judge)

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February 9, 2010  
(Dated and Mailed)

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Iowa Code Section 96.4-3 – Able and Available to Work  
Iowa Code Section 96.3-7 – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Ilya Litvin filed an appeal from two decisions issued by Iowa Workforce Development. The first was issued on December 28, 2009, reference 02, holding that Mr. Litvin was not eligible to receive unemployment benefits because he failed to provide proof he was legally authorized to work in the United States. Therefore, the department denied benefits effective December 14, 2009. The second decision was issued by the

department on January 6, 2010, reference 04, holding that Mr. Litvin had been overpaid benefits in the amount of \$268 for the week ending December 19, 2009. The overpayment was due to the previous decision disqualifying Mr. Litvin from receiving benefits.

A telephone hearing was scheduled for and held on February 8, 2010. Mr. Litvin appeared and testified on his own behalf. He also presented the testimony of his wife, Inna Litvin. Mr. Litvin's proposed Exhibit A was admitted into the record. Investigator Mary Piagentini appeared on behalf of the department. The documents contained in the file for each appeal were also admitted into the record.

#### FINDINGS OF FACT:

Ilya Litvin originally filed a claim for unemployment benefits effective November 8, 2009. On his application he noted that he was not a citizen of the United States but he did not provide an alien number. Therefore, the matter was referred to Mary Piagentini to investigate.

On December 8, 2009, Ms. Piagentini sent Mr. Litvin a notice asking that he provide proof of his status by December 18, 2009. The notice stated:

**THIS NOTICE IS AN OFFICAL REQUEST FOR A COPY OF YOUR  
IMMIGRATION & NATURALIZATION I-94, EMPLOYMENT  
AUTHORIZATION OR RESIDENT ALIEN CARD.**

(Bold and capital emphasis in original).

Mr. Litvin did not provide the department any documentation by the deadline. Therefore, on December 28, 2009, Ms. Piagentini caused a decision to be issued disqualifying Litvin for unemployment insurance benefits effective December 14, 2009, for failing to provide proof he was authorized to work in the United States. Mr. Litvin filed an appeal from that decision on January 4, 2010 and provided a copy of the front of his Permanent Resident Card along with the appeal.

While the Workforce Development waited to receive evidence of Mr. Litvin's status, he received unemployment benefits in the amount of \$268 for the week ending December 19, 2009. On January 6, 2010, Iowa Workforce Development sent Mr. Litvin a decision holding that Mr. Litvin had been erroneously paid benefits in the amount of \$268 for that week based on the previous decision disqualifying him from receiving unemployment insurance benefits.

Mr. Litvin also appealed from this decision.

Mr. Litvin and his wife testified that when they received the notice to provide proof of Mr. Litvin's status, they were confused about what documents Workforce Development needed. They each stated they spoke with some people including their parents and some people whose first language is English, however, no one was certain what

documents they should supply the agency. Mr. Litvin stated he attempted to call Ms. Piagentini several times on one day and left her a voice mail but she did not return his call. Mr. and Mrs. Litvin both testified that after they received the decision disqualifying Mr. Litvin for benefits, they went to the local Workforce Development office and discovered Mr. Litvin could simply submit a copy of his "green card". A copy was supplied at that time.

#### REASONING AND CONCLUSIONS OF LAW:

*The first issue is whether Workforce Development correctly held Mr. Litvin was disqualified from receiving unemployment benefits effective December 14, 2009.*

Iowa law requires that, in order to be eligible for unemployment benefits, an individual must be able and available for work.<sup>1</sup> The department has promulgated rules providing for a non-United States citizen to provide proof that he or she is authorized to work in the United States and is, therefore, able and available to work.<sup>2</sup> Those rules note that Section 3304(a)(14) of the Federal Unemployment Tax Act requires that state law deny benefits which are based on services performed by an alien who has not been legally admitted to the country as a permanent resident.<sup>3</sup> The rules further provide:

It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

\* \* \*

b. If the answer is "no," the claimant shall be requested to present documentary proof of legal residency. 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. The principal documents showing legal entry for permanent residency are the Form I-94 "Arrival and Departure Record" and the Forms I-151 and I-551 "Alien Registration Receipt Card." These forms are issued by the Immigration and Naturalization Service and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.

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(Emphasis supplied).

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1 Iowa Code section 96.4-3.  
2 871 IAC 24.60.  
3 871 IAC 24.60(1).

Here, when Mr. Litvin applied for benefits, he answered “no” to the question whether he was a citizen of the United States. The department then requested proof of his status and gave him ten days to respond. Mr. Litvin failed to provide the requested documentation within the allotted time and the department, according to its rules, disqualified him from receiving benefits until such time as he did provide a copy of his Permanent Resident Card.

Mr. Litvin’s arguments are without merit. While he might have attempted to call Ms. Piagentini, he did not remember when he did so. Mr. Litvin testified he thought it might have been on either November 17<sup>th</sup> or 18<sup>th</sup> 2009. He should have contacted her or his local Workforce Development office immediately after receiving the request to provide information if he was confused about what documentation was being requested.

The department’s decision disqualifying Ilya Litvin for unemployment benefits effective December 14, 2009 must be upheld.

*The second question is whether the department correctly determined Mr. Litvin was overpaid benefits in the amount of \$268 for the week ending December 19, 2009.*

Iowa law provides that the division of job service must recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.<sup>4</sup>

As set forth above, the department correctly determined that Mr. Litvin was ineligible for benefits effective December 14, 2009. However, he received \$268 in benefits for that week. Therefore, those benefits were paid in error and the department must recover the same.

Based on the foregoing, the department’s decision that Ilya Litvin was overpaid benefits in the amount of \$268 must be affirmed.

**DECISION:**

The decisions of Iowa Workforce Development dated December 28, 2009, reference 02, and January 6, 2010, reference 04 are AFFIRMED. Ilya Litvin was disqualified from receiving benefits effective December 14, 2009 and he has been overpaid benefits in the amount of \$268 for the week ending December 19, 2009,

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<sup>4</sup> Iowa Code section 96.3(7).