

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

Appeal Number: 10IWDUI080
OC: 11/29/09
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MUDESTHIR ABDALLA
201 N 2ND AVE. APT. 35
MARSHALLTOWN, IA 50158

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

DAN ANDERSON, IWD

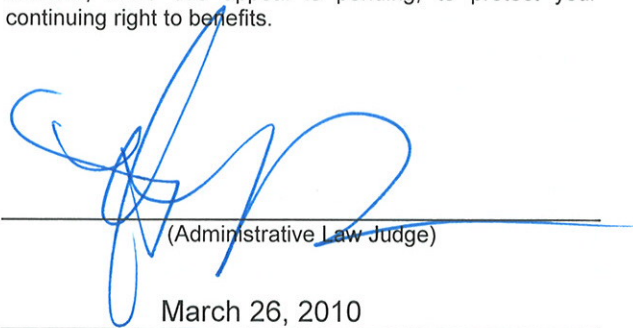
This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des 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.



(Administrative Law Judge)

March 26, 2010
(Dated and Mailed)

Iowa Code section 96.6-2 – Timeliness of Appeal
Iowa Code section 96.4-3 – Eligibility to Receive Benefits

STATEMENT OF THE CASE

Claimant Mudesthir Abdalla filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated December 28, 2009, reference 02. In the decision IWD found Abdalla was not eligible to receive unemployment benefits because he failed to provide proof he was a citizen or legally authorized to work in the United States. The decision stated benefits would be denied as of December 14, 2009 and would remain denied until he provided proof of citizenship or proof he was legally authorized to work.

IWD transmitted the case to the Department of Inspections and Appeals on March 3, 2010 to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the appeal file to Abdalla. A Notice of Telephone Hearing was mailed to all parties on March 8, 2010, scheduling a contested case hearing for March 25, 2010.

On March 25, 2010, a telephone hearing was held before Administrative Law Judge Heather L. Palmer. Abdalla appeared and testified. IWD Investigator Mary Piagentini appeared and testified on behalf of IWD. Documents 1 through 8 were admitted into evidence.

ISSUES

Whether the Claimant filed a timely appeal.

Whether IWD correctly determined the Claimant was ineligible to receive unemployment insurance benefits.

FINDINGS OF FACT

On December 5, 2009 Abdalla filed a claim for unemployment insurance benefits. Abdalla reported he was not a citizen or national of the United States. The matter was assigned to IWD Investigator Piagentini.

On December 8, 2009 Piagentini mailed Abdalla a letter asking him to provide IWD with a copy of his Immigration and Naturalization I-94, Employment Authorization or Resident Alien Card by December 18, 2009. As of December 24, 2009, Piagentini had not received any of the requested documents from Abdalla.

IWD issued a decision on December 28, 2009, finding Abdalla was not eligible to receive unemployment benefits because he had not provided proof that he was a citizen or legally authorized to work in the United States. The decision stated benefits would be denied as of December 14, 2009, and would remain denied until he provided proof of citizenship or that he was legally authorized to work. The decision provided that the decision would be final unless Abdalla filed an appeal by January 7, 2010.

Abdalla filed an appeal, which IWD received on February 8, 2010. Abdalla dated the appeal document February 5, 2010. In the appeal letter Abdalla stated he disagreed with the decision because he presented his I-94 to IWD in the first week of January 2009.

Abdalla did not provide an excuse why he failed to file an appeal by January 7, 2010. The address listed on the December 28, 2009 decision is the same address listed on the Notice of Hearing.

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 Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.¹

Abdalla had until January 7, 2010 to file his appeal. IWD did not receive his appeal, which he dated February 5, 2010, until February 8, 2010. The decision, reference 02, states in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 01/07/10, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Document 5). Abdalla did not file an appeal by January 7, 2010. Since Abdalla failed to file a timely appeal, I do not have jurisdiction to consider whether IWD correctly determined Abdalla was not eligible for benefits because he failed to provide proof of legal authorization to work in the United States.

DECISION

Abdalla failed to file a timely appeal. The representative's decision that Abdalla was not eligible for benefits because he failed to provide proof of legal authorization to work in the United State is affirmed.

hlp

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

