

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

Appeal Numbers: 10-IWDUI-134
10-IWDUI-135
10-IWDUI-136
OC DATE: 06-07-09
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**MELISSA KEARNEY
14930 OKA ROAD
LOS GATOS, CA 95032**

**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.

(Administrative Law Judge)

May 28, 2010

(Dated and Mailed)

Iowa Code Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Melissa L. Kearney filed appeals from three decisions issued by Iowa Workforce Development on January 11, 2010 (reference 01 and 02) and January 22, 2010 (reference 03).

Hearing was set for May 27, 2010 at 1:00. Notices of the telephone hearing were sent to Kearney at the address she supplied to Workforce Development. At the time of hearing Melissa Kearney failed to appear. Investigator Neil Anderson appeared and participated on behalf of

IWD. I waited five minutes past the time scheduled for hearing, but Kearney failed to appear. The hearing was held in her absence.

FINDINGS OF FACT:

On January 11, 2010, IWD Investigator Neil Anderson caused two decisions to be issued relating to Melissa Kearney. The first (reference 01) held Kearney had been overpaid unemployment insurance benefits in the amount of \$1189 for the weeks between March 1, 2009 and June 6, 2009 due to her misrepresentation of her earnings from Nordstrom, Inc. during the period in question. The second decision (reference 02) held Kearney had been overpaid benefits in the amount of \$598 between June 7, 2009 and June 27, 2009 again due to her misrepresentation of the amount of earnings she had from Nordstrom.

Both decisions issued to Kearney included the following language:

TO APPEAL THIS DECISION:
THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 01/21/10, OR RECEIVED BY IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE. IF THIS DATE FALLS ON A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT WORKING DAY.

Also on January 11, 2010, Kearney sent Investigator Anderson paystubs from her employment with Nordstrom. When Anderson received the new information, he reviewed the same and determined that the overpayment amount for the weeks from March 1, 2009 through June 6, 2009 should be recalculated. He did so and, on January 22, 2010, he caused a third decision (reference 03) to be issued. That decision stated:

YOUR OVERPAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS HAD BEEN REDUCED.

EXPLANATION OF DECISION:
YOUR OVERPAYMENT DECISION DATED 01/11/10 HAS BEEN REVIEWED DUE TO THE RECEIPT OF ADDITIONAL INFORMATION. AS A RESULT OF THE REVIEW, YOUR OVERPAYMENT HAS BEEN REDUCED TO \$1167.00. YOUR NEXT BILLING STATEMENT WILL REFLECT THIS ADJUSTMENT.

The decision also alerted Kearney to the deadline for any appeal:

TO APPEAL THIS DECISION:
THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 02/01/10, OR RECEIVED BY IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE. IF THIS DATE FALLS ON A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT WORKING DAY.

Kearney did not file an appeal by February 1, 2010. However, on April 15, 2010, she postmarked a letter of appeal addressed to Appeals Section requesting that someone review Anderson's findings. She stated she recently moved to California to be with her boyfriend and was on medical leave for a brain tumor, seizures and severe migraines.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeals have been filed in a timely manner.

Iowa law provides that, unless a claimant files an appeal within ten calendar days after notification of a decision is mailed to him or her, the department's decision regarding the payment of unemployment benefits shall become final.¹

The record in this case shows that Kearney failed to file a timely appeal. The first two decisions were issued on January 11, 2010 with an appeal deadline of January 21, 2010. While Kearney mailed additional information to Investigator Anderson on January 11, 2010, that information cannot be construed as an appeal from the decisions. First, Kearney would not have received the decisions on that date. Second, she did not mail the new information to the Appeals Section as instructed on the decision. She sent her information to Investigator Anderson. Although no appeal was filed, once Anderson reviewed the information, he issued a third decision on January 22, 2010 reducing the first overpayment to \$1167. Kearney failed to appeal from this decision until nearly three months had passed.

The Iowa Supreme Court has declared the requirement of filing appeals within the time allotted by statute is jurisdictional.² Failure to file a timely appeal deprives the undersigned of authority over the original decision unless there is evidence the claimant was deprived of a reasonable opportunity to file the appeal on a timely basis.³

Kearney failed to appear and participate in the hearing on his appeals. She has failed to present any evidence whatsoever that she was prevented in any way from filing timely appeals. While she stated in her appeal letter that she has suffered a brain tumor, seizures and migraines, she did not provide any information on whether and how those conditions affected her ability to file a timely appeal. Therefore it must be determined that the appeal filed in these cases is not timely. IWD's decisions references 02 and 03 should remain in full force and effect.

DECISION:

Melissa Kearney has failed to file timely appeals from the decisions at issue. IWD's decision issued January 11, 2010 reference 02 remains **AFFIRMED** and shall remain in full force and effect. IWD's decision issued January 11, 2010, reference 01 has been rescinded and is superceded by IWD's decision issued January 22, 2010, reference 03. The latter decision is **AFFIRMED** and shall remain in full force and effect.

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1 Iowa Code section 96.6-2.

2 *Franklin v. Iowa Department of Job Service*, 277 N.W.2d 877, 881 (Iowa 1979).

3 *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373, 377 (Iowa 1979), *Hendren v. Iowa Employment Security Council*, 217 N.W.2d 255 (Iowa 1974).