

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

Appeal Numbers: 12IWDUI488-489
OC: 12/25/11
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ELAINE SPIKES
3514 SW MAIZE DR
ANKENY, IA 50023-8814

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
IRMA LEWIS, INVESTIGATOR

JOSEPH WALSH, IWD
JONI BENSON, 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)

December 17, 2012
(Dated and Mailed)

Iowa Code section 96.4-3 – Eligibility for Benefits
Iowa Code section 96.6-2 – Recovery of Overpayment Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Claimant/Appellant Elaine Spikes appealed two decisions issued by Respondent Iowa Workforce Development (“IWD”). The first decision, reference 01, dated September 13, 2012 finds effective May 6, 2012 through September 8, 2012, Spikes is ineligible to receive unemployment insurance benefits because she was notified to provide her work searches and when she provided her work searches, they were insufficient. The second

decision, reference 02, dated September 14, 2012, finds Spikes was overpaid \$2,540.33 for the eighteen weeks between May 6, 2012 and September 8, 2012 because of a decision dated September 13, 2012, disqualifying her for an inadequate work search.

On October 11, 2012, IWD transmitted the cases to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the administrative files to Spikes. Irma Lewis from IWD submitted additional documents prior to the hearing.

A contested case hearing was held on December 17, 2012. Spikes appeared and testified. No one appeared on behalf of IWD. Exhibits 1 through 9 were admitted into the record.

ISSUES

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

Whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.

Whether IWD correctly determined the overpayment was due to misrepresentation.

FINDINGS OF FACT

Spikes has received unemployment insurance benefits in the past. Spikes is interested in returning to California and has focused her job search in California. IWD requested Spikes submit work searches. Spikes testified she submitted work searches to IWD. The record reflects Spikes submitted work searches to IWD. IWD issued a decision, reference 01, on September 13, 2012, finding effective May 6, 2012 through September 8, 2012, Spikes was ineligible to receive unemployment insurance benefits because she was notified to provide her work searches and when she provided her work searches, they were insufficient. No one appeared from IWD at hearing to explain how Spikes' work searches are inadequate.

IWD issued a second decision, reference 02, finding Spikes was overpaid \$2,540.33 for the eighteen weeks between May 6, 2012 and September 8, 2012 because of a decision dated September 13, 2012, disqualifying her for an inadequate work search. The decision states the overpayment was due to misrepresentation. Spikes appealed both decisions.

REASONING AND CONCLUSIONS OF LAW

I. Eligibility for Benefits

To be eligible to receive unemployment benefits, an unemployed individual must be able and available for work, and earnestly and actively seeking work.¹ The unemployed

¹ Iowa Code § 96.4(3) (2011).

individual bears the burden of proving the individual is able and available for work, and earnestly and actively seeking work.²

Merely registering with IWD does not establish an individual is earnestly and actively seeking work.³ It is essential the person diligently look for work.⁴ An individual is ineligible for benefits for any period for which IWD finds the individual has failed to make an earnest and active search for work.⁵ Spikes testified she made work searches during the period in question. The record reflects she submitted work searches to IWD. No one appeared on behalf of IWD to explain how Spikes' work searches are inadequate. IWD's decision should be reversed.

II. Overpayment and Misrepresentation

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.⁶ 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.⁷ IWD has not established Spikes was disqualified for benefits. IWD has not proven Spikes received an overpayment, and because it was not proven she received an overpayment, it was not proven misrepresentation in this case.

DECISION

IWD's decisions dated September 13, 2012, reference 01, and September 14, 2012, reference 02, are REVERSED.

hlp

² 441 IAC 24.22.

³ *Id.* 24.22(3).

⁴ *Id.*

⁵ *Id.*

⁶ Iowa Code § 96.3(7).

⁷ *Id.*