

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

Appeal Number: 12IWDUI597-598

OC: 7/31/11

Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.**

ERIC E. STEWARD
361 S 47TH ST
WEST DES MOINES, IA 50265

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

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
430 E GRAND
DES MOINES IA 50309

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.

JOE WALSH, IWD
JONI BENSON, IWD

(Administrative Law Judge)

December 26, 2012

(Decision Dated & Mailed)

Iowa Code § 96.3(7) – Recovery of Overpayment Benefits
Iowa Code § 96.4(3) – Whether Claimant was Eligible to Receive Benefits
Iowa Code § 96.6(2) – Whether Claimant Filed a Timely Appeal
Iowa Code § 96.16(4) – Misrepresentation

STATEMENT OF THE CASE

The Claimant, Eric E. Steward, filed an appeal postmarked November 1, 2012,¹ from a decision issued by Iowa Workforce Development (IWD) dated September 27 (reference 03). The decision informed Mr. Steward that IWD had determined that he had been overpaid \$5,232.00 in unemployment insurance benefits for 12 week(s) between May 6 and July 28.

These cases were transmitted from IWD to the Department of Inspections and Appeals on November 19 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed

¹ All dates hereafter refer to calendar year 2012.

to all parties on November 26 setting a hearing date of December 24 at 9:00 a.m. Mr. Steward appeared personally and testified. No one appeared for IWD. Administrative notice was taken of documents in the files, which are referred to more specifically herein.

ISSUES

Four issues were asserted by IWD on appeal: 1) whether the Claimant submitted a timely appeal; 2) whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and if so, whether the amount of overpayment was correctly calculated; 3) whether IWD correctly determined the overpayment was a result of misrepresentation; and 4) whether IWD correctly determined the Claimant is ineligible to receive unemployment benefits.

FINDINGS OF FACT

The following facts are found from the testimony provided at hearing by Mr. Steward and from the following documents in the administrative appeal files:

IWD communication to Claimant dated September 7

IWD decision dated September 18

IWD decision dated September 27

On September 7, the Investigation and Recovery Bureau of IWD mailed a blank work search history form to Mr. Steward, requiring him to return the completed form to IWD by 3:30 p.m. on September 17. On September 18, IWD sent a decision to Mr. Steward informing him that he was deemed disqualified by IWD to receive unemployment insurance benefits between May 6 and July 28 because he had produced no records that he had searched for work. Neither of the communications of September 7 and September 18 was sent to the correct address. At all times pertinent to this matter, Mr. Steward has resided at the address in the caption above.

The decision from IWD dated September 27, was sent to Mr. Steward at his correct address, and he received it September 28. In its decision, under "Explanation of Decision," IWD stated as follows:

You are overpaid \$5,232.00 for 12 week(s) between May 6, 2012 and July 28, 2012. This is because of the decision dated 09/18/12, which disqualified you for an inadequate work search.

The September 27 decision also states as follows:

This decision becomes final unless an appeal is postmarked by 10/07/12, or received by Iowa Workforce Development appeal section by that date. ... If you have questions or need information, call the Workforce Development Center at (515) 281-9619 between 9 a.m. and 3 p.m.

On September 29, Mr. Steward received the September 18 decision of IWD, which had been re-mailed to his correct address by IWD on September 28.

Mr. Steward received a copy of the blank work search history form (sent to the erroneous address on September 7 and requiring him to return the completed form to IWD by 3:30 p.m. on September 17) only at the time that this matter was transmitted for hearing to the Department of Inspections and Appeals.

On October 1, Mr. Steward called the number listed on the September 27 decision. The person

answering the number at IWD took Mr. Steward's information and told him she would give the information to a supervisor to "take care of it." Mr. Steward heard nothing more until October 18, when he received a statement mailed from IWD demanding re-payment. After swapping voicemail with IWD for two days, Mr. Steward initiated another call to IWD and was told that the only thing he can do is appeal in writing. Mr. Steward did so, mailing a written appeal on November 1. In his appeal letter, Mr. Steward does not address the 12 week timeframe from May 6 to July 28.

REASONING AND CONCLUSIONS OF LAW

It must first be determined whether Mr. Steward filed a timely appeal from the decisions of the IWD. Iowa Code § 96.6(2) requires that an appeal of an IWD 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. *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

When Mr. Steward received the September 27 decision from IWD, he had no context for its statement that he was deemed overpaid \$5,232.00 for 12 week(s) between May 6 and July 28 "because of the decision dated 09/18/12." Mr. Steward had not yet received any such decision dated September 18. When he did receive that decision, he was still lacking the initial communications from IWD that set this entire case in motion. Without the letter of September 7 from the Investigation and Recovery Bureau of IWD with the blank work search history form and the demand to fill out the same and return the completed form to IWD by 3:30 p.m. on September 17, Mr. Steward had no reasonable means of knowing how to respond to the IWD decisions of September 18 and September 27.

In this vacuum of information, Mr. Steward took the reasonable step of calling IWD. After trying to resolve the matter by phone, Mr. Steward filed his written appeal. Only after he filed his appeal did he receive a copy of the letter of September 7 from the Investigation and Recovery Bureau with the blank work search history form and the demand to fill it out and return it. As Mr. Steward credibly testified, he finally understood for the first time what IWD was talking about when he saw the September 7 communication. This is bolstered by the fact that his appeal letter mailed before he had seen IWD's letter of September 7 does not address the 12 week time frame of May 6 to July 28 and the claim that his work search during that time period was inadequate.

A person cannot be deprived of property interests without the observance of basic due process rights. *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). In *Goldberg*, public assistance payments to welfare recipients were a sufficient property interest to invoke due process. The unemployment insurance benefits here do likewise. "Once it is determined that due process applies, the question remains what process is due." *Goss v. Lopez*, 419 U.S. 565, 577-78, 95 S.Ct. 729, 738, 42 L.Ed.2d 725 (1975). The minimum process due is that the person faced with deprivation of property (1) be informed why the person's property interests are at risk and (2) have the opportunity to respond.

Here, Mr. Steward did not receive full notice of why IWD was seeking repayment of \$5,232 until after he had filed a written appeal. Only after he filed his written appeal did he understand also that he was also being accused by IWD of misrepresentation. Because he was forced to file a written appeal without this full knowledge, Mr. Steward had no reasonable means of knowing *how* to respond when he filed his written appeal.

Under these circumstances, it cannot be said that Mr. Steward failed to file a timely appeal. He was told by an IWD representative in a telephone call on October 24 to file a written appeal, and that is what Mr. Steward did after his good faith efforts to get pertinent information were fruitless.

Having determined that Mr. Steward's appeal was timely, the merits of the claims must be examined.

At hearing, no one appeared on behalf of IWD. Even though the burden is on a claimant to prove he is not disqualified for benefits, IWD must have first submitted a *prima facie* case. Iowa Code § 96.6; *Porazil v. Iowa Workforce Dev., Unemployment Ins. Div.*, 670 N.W.2d 431 (Iowa Ct. App. 2003).

There is simply nothing in the administrative file to explain why IWD first claimed that Mr. Steward was overpaid for the period from May 6 to July 28. There is nothing in the administrative file to explain why IWD then claimed any overpayment was because of a misrepresentation by Mr. Steward. IWD has failed to establish any *prima facie* claims.

DECISION

For the foregoing reasons, IWD's decisions dated September 18, 2012 and September 27, 2012 are **REVERSED**. IWD shall take any action necessary to implement this decision.

CJG