

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

**Appeal Numbers:** 09-IWDUI-232  
09-IWDUI-233  
**OC: 01-25-09**  
**Claimant: Appellant (1)**

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**MAMADOU DIALLO**  
**2210 3<sup>RD</sup> AVE.**  
**EAST MOLINE, IL 61244**

**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)

December 16, 2009

---

(Dated and Mailed)

---

Iowa Code Section 96.6-2 – Timeliness of Appeal  
Iowa Code Section 96.3-7 – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Mamadou Diallo filed an appeal from two decisions issued by Iowa Workforce Development. The first was issued on October 8, 2009, reference 02, holding that Mr. Diallo was not eligible to receive unemployment benefits because the records of the Immigration and Naturalization Service indicate he is not legally authorized to work in the United States. Therefore, the department denied benefits effective January 25, 2009. The second decision was issued by the department on November 12, 2009, reference 03, holding that Mr. Diallo had been overpaid

benefits in the amount of \$2,217 for the period beginning January 25, 2009 through the week ending on June 27, 2009. The overpayment was due to the previous decision disqualifying Mr. Diallo from receiving benefits.

A telephone hearing was and held on December 16, 2009. Mr. Diallo appeared and testified on his own behalf. He also provided the testimony of his wife, Tanya Diallo. Investigator Irma Lewis appeared on behalf of the department. The documents contained in the administrative record were considered.

#### FINDINGS OF FACT:

Mamadou Diallo originally filed a claim for unemployment benefits effective January 25, 2009. He began receiving benefits in the amount of \$357 per week.

On September 8, 2009 Iowa Workforce Development Investigator Mary Piagentini sent Mr. Diallo a notice asking that he provide copies of INS documents by September 22, 2009 showing his authorization to work in the United States. Mr. Diallo provided a copy of his Employment Authorization Card, however, that document showed an expiration date of May 26, 2006. Mr. Diallo also supplied copies of his marriage license, his driver's license and his social security card.

Iowa Workforce Development sought the assistance of the Department of Homeland Security to verify Mr. Diallo's status. DHS determined that Mr. Diallo was not authorized to work in the United States. Therefore, on October 8, 2009, Iowa Workforce Development issued a decision that Mr. Diallo was ineligible for unemployment insurance benefits as of the effective date of his claim, January 25, 2009 based on the fact he was not authorized to work in the United States. The document further informed Mr. Diallo that the department's decision would become final unless he postmarked an appeal or an appeal was received by October 18, 2009. Mr. Diallo did not appeal.

During the period in which the department was attempting to verify Mr. Diallo's status, he continued to receive unemployment benefits as follows:

Week ending January 31, 2009	\$ 357
Week ending February 7, 2009	357
Week ending February 21, 2009	357
Week ending April 4, 2009	382
Week ending May 2, 2009	382
Week ending June 27, 2009	<u>382</u>
Total	\$2217

On November 12, 2009, the department issued a second decision holding that Mr. Diallo had been overpaid in the amount of \$2217 for the 6-week period from January 4, 2009 through April 4, 2009 based on the previous decision disqualifying him from receiving unemployment insurance benefits.

Mr. Diallo filed an appeal dated November 19, 2009. His appeal was received by the Appeals Section that same date. Mr. Diallo argues that he has been in the U.S. for years on a work permit and attempted to obtain a green card but was denied because his first wife left him

during the process and they later divorced. Mr. Daillo also argues that his employer gave him the papers to apply for unemployment after he was laid off and Workforce Development granted his benefits. Therefore, if he received any benefits in error, it was not his fault.

#### REASONING AND CONCLUSIONS OF LAW:

*The first issue is whether there has been a time appeal of the department's decision disqualifying Mr. Diallo from receiving benefits.*

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

The Iowa Supreme Court has declared the requirement of filing appeals within the time allotted by statute is jurisdictional.<sup>2</sup> 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.<sup>3</sup>

Mr. and Mrs. Diallo admit that Mr. Diallo's appeal was not filed timely. They argue they did not understand what was going on and spent days trying to contact Workforce Development for an explanation. Mrs. Diallo claims they were given "the runaround" and, by the time they ascertained what was happening, the appeal period had run.

Under the circumstances, I cannot find Mr. Diallo was denied a reasonable opportunity to appeal. The decision stated:

YOU ARE NOT ELIGIBLE TO RECEIVE UNEMPLOYMENT INSURANCE BENEFITS.

#### EXPLANATION OF DECISION:

THE IMMIGRATION AND NATURALIZATION SERVICE REVIEWED THE ALIEN REGISTRATION DOCUMENT(S) YOU PROVIDED, AND THEIR RECORDS INDICATE YOU DO NOT HAVE AUTHORITY TO WORK IN THE UNITED STATES. BENEFITS ARE DENIED EFFECTIVE 01/25/09.

It is difficult to imagine how much more clearly Workforce Development could have stated its reasoning in disqualifying Mr. Diallo. Further, Mr. Diallo should have been aware that Investigator Piagentini was assigned to his case because the September 8, 2009 Notice to Report contained her name and telephone number. If Mr. Diallo or his wife had questions, they should have contacted her.

Additionally, the decision contained the following language with regard to filing an appeal:

---

<sup>1</sup> Iowa Code section 96.6-2.

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

<sup>3</sup> *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).

TO APPEAL THIS DECISION:  
THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 10/18/09, 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.

The reverse side of the decision contained specific instructions for mailing or faxing a written appeal. Mr. Diallo could not have been more well-informed of the necessity of filing a timely appeal.

I find it is more likely Mr. Diallo did not appeal the disqualification decision because he had finished receiving benefits by the time the decision was issued and he did not think it was important whether the department thought he was eligible or not. Not until he received the second decision that he was overpaid benefits and that those benefits must be paid back did the disqualification decision become important to him. Mr. Diallo was not deprived of a reasonable opportunity to file his appeal on a timely basis. Therefore, the department's decision disqualifying him from receiving benefits effective January 25, 2009 must be affirmed.

*The second issue is whether Mamadou Diallo was overpaid unemployment insurance benefits in the amount of \$4381.*

Iowa law provides that the division of job 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>

Mr. Diallo did not question the Workforce Development's evidence that he received benefits in the amount of \$2217 during the weeks between January 25, 2009 and June 27, 2009. Because the department's decision disqualifying him from receiving those benefits is being affirmed, the department's decision Mr. Diallo was overpaid benefits in the amount of \$2217 must also be affirmed.

DECISION:

The decisions of Iowa Workforce Development dated October 8, 2009, reference 02, and November 12, 2009, reference 03 are AFFIRMED. Mamadou Diallo was disqualified from receiving benefits effective January 25, 2009 and he has been overpaid benefits in the amount of \$2217,

kka

---

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