

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ANTHONY J. CHIA
1600 SEARLE STREET
DES MOINES, IA 50317-2924

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

DAN ANDERSON, IWD

Appeal Numbers:
10-IWDUI-137
10-IWDUI-138
10-IWDUI-139
10-IWDUI-140
10-IWDUI-141
10-IWDUI-142
10-IWDUI-143
10-IWDUI-144

OC DATES:
07-11-93
09-30-01
11-24-02
07-16-07

Claimant: Appellant (1)

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 27, 2010
(Dated and Mailed)

Iowa Code Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Anthony J. Chia filed appeals from the following decisions issued by Iowa Workforce Development:

DATE OF CLAIM	DATE OF DECISION	DECISION
07-11-93 (Ref. 01)	08-13-93	Overpaid benefits in the amount of \$81
09-30-01 (Ref. 01)	08-20-02	Overpaid benefits in the amount of \$320
11-24-02 (Ref. 02)	12-06-02	Overpaid benefits in the amount of \$227
11-24-02 (Ref. 03)	01-10-03	Overpaid benefits in the amount of \$52
11-24-02 (Ref. 04)	11-20-03	Overpaid benefits in the amount of \$292
07-16-06 (Ref. 03)	03-09-07	Overpaid benefits in the net amount of \$221
07-16-06 (Ref. 04)	06-06-07	Overpaid benefits in the amount of \$463
07-16-06 (Ref. 05)	09-27-07	Overpaid benefits in the net amount of \$737

Hearing was set for May 27, 2010 at 8:15. Notices of the telephone hearing were sent to Chia at the address supplied to Workforce Development and to Iowa Workforce Development. At the time of hearing Anthony Chia failed to appear. Further, no one appeared on behalf of IWD. I waited five minutes past the time scheduled for hearing, but neither party appeared to participate. This decision is therefore based on the documents contained in the administrative files.

FINDINGS OF FACT:

Claimant Anthony Chia has filed four separate claims for unemployment benefits since 1993. On each the of those claims, IWD issued a decision or decisions finding that Chia had been overpaid benefits due to a failure to report or an incorrect reporting of wages earned while claiming benefits. The decisions are as follows:

DATE OF CLAIM	DATE OF DECISION	DECISION
07-11-93 (Ref. 01)	08-13-93	Overpaid benefits in the amount of \$81
09-30-01 (Ref. 01)	08-20-02	Overpaid benefits in the amount of \$320*
11-24-02 (Ref. 02)	12-06-02	Overpaid benefits in the amount of \$227
11-24-02 (Ref. 03)	01-10-03	Overpaid benefits in the amount of \$52
11-24-02 (Ref. 04)	11-20-03	Overpaid benefits in the amount of \$292*
07-16-06 (Ref. 03)	03-09-07	Overpaid benefits in the net amount of \$221
07-16-06 (Ref. 04)	06-06-07	Overpaid benefits in the amount of \$463*
07-16-06 (Ref. 05)	09-27-07	Overpaid benefits in the net amount of \$737*

Each of the decisions marked with an asterisk above also contained a finding that Chia received the overpayment involved due to misrepresentation on his part.

Each of the eight decisions contained language warning Chia that if he wished to appeal, he must do so within ten days of the date the decision was issued.

Chia filed these appeals with the IWD's Appeals Section on January 29, 2010.

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 far more than ten calendar days elapsed between the mailing date of each decision and the date these appeals were filed. In fact, the most recent decision from which Chia appeals was issued 2 ½ years ago. 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

Chia failed to appear and participate in the hearing on his appeals. He has failed to present any evidence whatsoever that he was prevented in any way from filing timely appeals. Therefore it must be determined that the appeals filed in these cases are not timely and IWD's decisions should remain in full force and effect.

DECISION:

Anthony Chia has failed to file timely appeals from the decisions at issue. The following decisions issued by IWD are **AFFIRMED** and shall remain in full force and effect.

DATE OF CLAIM	DATE OF DECISION
07-11-93 (Ref. 01)	08-13-93
09-30-01 (Ref. 01)	08-20-02
11-24-02 (Ref. 02)	12-06-02
11-24-02 (Ref. 03)	01-10-03
11-24-02 (Ref. 04)	11-20-03
07-16-06 (Ref. 03)	03-09-07
07-16-06 (Ref. 04)	06-06-07
07-16-06 (Ref. 05)	09-27-07

kka

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).