

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

Appeal Number: 11IWDUI023
OC: 01/11/09
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JAMES D. PRICE
317 5th STREET NW
MASON CITY, IA 50401-3043

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS 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)

February 28, 2011
(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation
Iowa Code section 96.6(2) – Timely Appeal

STATEMENT OF THE CASE

James D. Price filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated March 3, 2010; reference 06, which determined that Mr. Price was overpaid \$828 in unemployment insurance benefits for two weeks from August 23, 2009, through September 5, 2009. The decision stated that the overpayment resulted from the claimant incorrectly reporting wages from Dean Snyder Construction.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on January 21, 2011 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on February 4, 2011. On February 28, 2011, a telephone appeal hearing was held before Administrative Law Judge Robert H. Wheeler. Jane Connor represented IWD and testified. The appellant appeared pro se and testified. Documents including the IWD decision, a Decision Overpayment Worksheet, a Preliminary Audit Notice, an Agreement To Reimburse Workforce Development For Overpayment of Unemployment Insurance Benefits, a Crossmatch Audit Worksheet, and a Wages Crossmatch form submitted by IWD, and the claimant's request to appeal entered the record without objection.

ISSUES

Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits.

Whether IWD correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

Whether the claimant filed a timely appeal.

FINDINGS OF FACT

James Price made claims for and received unemployment benefits during the two week period from August 23, 2009, through September 5, 2009. When IWD pays unemployment insurance benefits to a claimant in the same period as reported wages occur, a computer automatically generates an audit. Dean Snyder Construction reported that Mr. Price earned wages in those weeks. When making claims for unemployment benefits for those weeks, Mr. Price reported having earned no wages. This resulted in an overpayment of benefits as follows:

Week Ending	Wages Reported Claimant/Employer	Benefits Paid/Entitled	Overpayment
August 29, 2009	\$ 0/523	389/0	389 +25
September 5, 2009	0/523	389/0	<u>389 +25</u>
			828.00

The lack of wages reported by Mr. Price resulted in his receipt of overpaid benefits of \$828 for the two weeks in question. This includes \$25 in federal stimulus money added to the unemployment insurance benefit for each week in which the claimant was not entitled to receive any benefits. (Crossmatch audit; Connor testimony).

IWD notified Mr. Price of the overpayment by a preliminary audit notice dated January 28, 2010. Mr. Price did not respond. IWD issued the March 3, 2010, decision which is the subject of this appeal. This appeal followed on December 27, 2010. (Connor testimony).

Mr. Price testified that he knowingly and falsely reported no wages in order to receive unemployment insurance benefits for these two weeks. He testified that he intended to repay IWD. Mr. Price offered no explanation for his late appeal. (Price testimony).

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 96.6(2) states (in pertinent part),

“Unless the claimant or other interested party , after notification or within ten calendar days after notification was mailed to the claimant’s last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Mr. Price did not appeal in a timely manner. He dated his appeal request on December 27, 2010. This request is over nine months beyond the 10 day deadline imposed by the controlling statute. The appeal must be denied for being late, and the other issues do not need to be addressed, although it should be noted that the claimant admitted both the amount of the overpayment and the fact of misrepresentation. The IWD decision being appealed must stand.

DECISION

Iowa Workforce Development’s decision dated March 3, 2010, is **AFFIRMED**. The claimant was overpaid unemployment insurance benefits in the amount of \$828. The overpayment was due to misrepresentation by the claimant.

rhw