

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

Appeal Number: 10-IWDUI-003
OC: 09/20/09
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

HEATHER C. CERETTI
129 HUGHES AVENUE
DES MOINES, IA 50315-7615

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

DAN ANDERSON, IWD

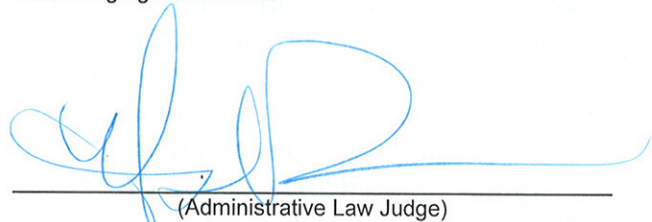
This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des 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)

January 26, 2010

(Dated and Mailed)

Iowa Code section 96.6-2 – Timeliness of Appeal
Iowa Code section 96.5-8 – Administrative Penalty

STATEMENT OF THE CASE

Heather Ceretti filed an appeal from a decision issued by Iowa Workforce Development ("IWD") dated October 16, 2009, reference 01. In the decision IWD disqualified Ceretti from receiving benefits from October 11, 2009 until May 29, 2010. The decision states that the penalty was the result of false statements made by Ceretti concerning her employment and earnings from August 12, 2007 until December 8, 2007.

IWD transmitted the case to the Department of Inspections and Appeals on January 8, 2010 for scheduling of a contested case hearing. When IWD transmitted the case, it mailed a copy of the appeal file to Ceretti. A Notice of Telephone Hearing was mailed to all parties on January 11, 2010. On January 12, 2010, IWD's investigator, Irma Lewis, mailed Ceretti a copy of an additional document entitled "Administrative Penalty."

On January 26, 2010, a telephone hearing was held before Administrative Law Judge Heather L. Palmer. Ceretti appeared and testified. IWD Investigator Lewis represented IWD and testified. The entire appeal file, including the January 12, 2010 document was admitted into the record as evidence.

ISSUES

Whether the appellant filed a timely appeal.

Whether the representative correctly imposed an administrative penalty on the basis of false statements made by the appellant.

FINDINGS OF FACT

On May 28, 2008, the Department determined Ceretti received an overpayment of \$3,910 for seventeen weeks between August 12, 2007 and December 8, 2007, when she failed to report wages earned by Chladek Orthotics. Lewis and Ceretti testified that Ceretti made payments toward the overpayment amount.

In September 2009, Ceretti again applied for unemployment benefits. On September 30, 2009, Lewis sent Ceretti a letter enclosing copies of documents substantiating the \$3,910 overpayment in benefits she received from August 12, 2007 through December 8, 2007. The letter noted the overpayment was caused by Ceretti's failure to report correct work and wages earned from Chladek Orthotics. Lewis informed Ceretti the Department would decide whether to assess an administrative penalty on her current unemployment insurance claim. Lewis noted an administrative penalty is a disqualification from receiving benefits for a specific period of time because false information was given on prior claims for benefits. Lewis provided Ceretti with an opportunity to respond by mail concerning the issue by October 12, 2009.

Ceretti sent Lewis a letter dated October 6, 2009, explaining why she gave false information to the Department from August 12, 2007 through December 8, 2007. Ceretti claimed she was not familiar with the program and that she accepted unemployment benefits for four months after she was employed. Ceretti stated she did not know what she was doing was wrong. She stated she had heard she could make a certain amount and still receive benefits. Ceretti noted "ignorance is no excuse and [she] realized that after a while." Ceretti reported she was supporting herself, her daughter, and her boyfriend and the extra money "really helped."

Lewis reviewed Ceretti's letter and file. She determined Ceretti had admitted to fraud and that this was the second occurrence. Lewis found Ceretti should be familiar with

the procedure and determined Ceretti should be disqualified for 34 weeks. Lewis testified that in November 2003, the Department determined Ceretti had received an overpayment because she incorrectly or failed to report earnings from Airport Lodging LLC.

The Department issued a decision on October 16, 2009, disqualifying Ceretti from receiving benefits from October 11, 2009 until May 29, 2010. The decision states that the penalty was the result of false statements made by Ceretti concerning her employment and earnings from August 12, 2007 until December 8, 2007.

The Department received Ceretti's appeal on December 14, 2009. The appeal envelope shows Ceretti mailed the appeal on December 12, 2009. In the appeal letter Ceretti stated she was unaware she had been denied unemployment benefits. She stated she "thought it was going toward [her] payment." Ceretti reported she was working as many hours as her employer will allow her to work, she is receiving food assistance, and that she received a stimulus payment. Ceretti believes she should be eligible for unemployment benefits.

REASONING AND CONCLUSIONS OF LAW

Iowa Code section 96.6(2) requires that an appeal of a 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.¹

Ceretti filed her appeal nearly two months after the Department issued its decision. At hearing Ceretti testified she did not receive notice of the decision in the mail. She stated that she first received notice of the decision when she called Lewis, prior to filing her appeal. The decision was mailed to the same address listed Ceretti's appeal, and on the Notice of Telephone Hearing. Lewis reported the decision was not returned to her office as undeliverable mail. Ceretti's appeal was not timely. Ceretti is therefore foreclosed from challenging the decision. Since Ceretti's appeal was not filed timely, I do not have jurisdiction to consider whether the Department correctly imposed an administrative penalty on the basis of false statements made by Ceretti.

DECISION

The representative's decision is **AFFIRMED**. Ceretti is disqualified from receiving unemployment benefits from October 11, 2009 until May 29, 2010.

hlp

¹ *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

