

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

BETHANY L. COX
1423 - 29th AVENUE N
FORT DODGE, IA 50501-7251

IOWA WORKFORCE DEVELOPMENT
REEMPLOYMENT SERVS. COORDINATOR
SHANLYN SEIVERT
430 EAST GRAND AVENUE
DES MOINES IA 50319-0209

JOE WALSH, IWD
ANGELA PETERSON, IWD
CARLA DENNIS, IWD

Appeal Number: 12IWDUI233 and 234
OC: 5/29/11
Claimant: Appellant (1), (2)

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.***

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)

July 30, 2012

(Decision Dated & Mailed)

Iowa Code section 96.2(2) – Timely Appeal
Iowa Code section 96.3(7) - Overpayment
871 IAC 24.26(6) – Reemployment Services

STATEMENT OF THE CASE

Claimant Bethany Cox appealed from two decisions issued by Iowa Workforce Development (“IWD”). The first, dated November 4, 2011, reference 02, determined Ms. Cox ineligible to receive unemployment insurance benefits as of October 30, 2011, because she failed to provide justifiable cause for failing to participate in reemployment services. The second decision, dated May 30, 2012, reference 03, determined Ms. Cox had been overpaid \$364 as a result of the prior decision. Ms. Cox filed an appeal on June 8, 2012.

IWD transmitted the cases to the Department of Inspections and Appeals on June 28, 2012 to schedule a contested case hearing. Notices of Telephone Hearing issued on July 3, 2012, scheduling a hearing for July 30, 2012. The notices to Ms. Cox went to her address of record,

which is the same address to which the decisions under appeal were sent. The notices have not been returned in the mail as undelivered.

On July 30, 2012, this appeal proceeded to a hearing before Administrative Law Judge Robert H. Wheeler. Claimant/Appellant Bethany Cox failed to appear. Angela Peterson appeared and testified for the Respondent. Exhibits 1 through 6 entered the record without objection.

ISSUES

Whether the claimant filed a timely appeal.

Whether IWD correctly determined that the Claimant did not establish justifiable cause for failing to participate in reemployment services.

Whether IWD correctly determined that the appellant had been overpaid unemployment insurance benefits as a result of her ineligibility.

FINDINGS OF FACT

Ms. Cox was scheduled to attend reemployment services on November 3, 2011. She did not attend and did not call to reschedule. (Exhibit 1; Peterson testimony).

On November 4, 2011, IWD issued a decision, reference 02, finding Ms. Cox was ineligible to receive unemployment insurance benefits as of October 30, 2011, because she had not established justifiable cause for failing to participate in reemployment services. Ms. Cox did contact Ms. Peterson and reschedule the reemployment services, which she later attended. Her benefits were only locked for a one week period. (Exhibits 2, 3; Peterson testimony).

Ms. Cox' benefits ended on October 31, 2011, regardless of her ineligibility. (Peterson testimony).

On May 30, 2012, IWD issued a decision finding that Ms. Cox had been overpaid benefits for one week as a result of her ineligibility as of October 30, 2011, determined in the prior decision. IWD found that overpayment for one week, ending November 5, 2011, amounted to \$364. However, Ms. Cox' benefits had expired on October 31, 2011, and she did not receive any payment for the week ending November 5, 2012. Ms. Peterson's testimony acknowledged that no overpayment occurred. (Exhibit 4; Peterson testimony).

Ms. Cox filed an appeal dated June 8, 2012.

REASONING AND CONCLUSIONS OF LAW

Timely Appeal

Iowa Code section 96.6 (2) provides (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.”

The appeal of the first decision in this matter followed the decision being appealed by almost seven months. This appeal was not timely, and there is no need to address the merits of the appeal further. The decision of November 4, 2011, reference 02, became final by operation of law on November 14, 2011, ten calendar days after the decision.

Overpayment

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant. If a claimant is overpaid benefits as a result of misrepresentation, IWD may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant’s real or personal property and rights to property. Iowa Code § 96.3(7)(a), 871 Iowa Administrative Code (IAC) 24.18.

Because Ms. Cox unemployment benefits had expired on October 31, 2011, she was not paid during the one week of ineligibility, ending November 5, 2011. Therefore, no overpayment occurred.

DECISION

Iowa Workforce Development’s decision dated November 4, 2011, reference 02, is AFFIRMED. No timely appeal occurred.

Iowa Workforce Development’s decision dated May 30, 2012, reference 05, is REVERSED. No overpayment occurred.

rhw