

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

Appeal Number: 17IWDUI284

OC: 11/09/14

Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

**RICHARD HANSEN
75715 FAIRVIEW ROAD
ANITA, IOWA 50020**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
RE-EMPLOYMENT SERVICES
1000 E GRAND
DES MOINES IA 50309**

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.

**JODI DOUGLAS
KASANDRA ELLENWOOD**

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.

JONI BENSON, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, UI APPEALS MANAGER

(Administrative Law Judge)

June 30, 2017

(Decision Dated & Mailed)

Iowa Code § 96.6(2) – Whether Claimant Filed a Timely Appeal
Iowa Code § 96.3(7) – Recovery of Overpayment Benefits
Iowa Code § 96.16(4) – imposition of penalty for misrepresentation

STATEMENT OF THE CASE

The Iowa Workforce Development (“IWD”) issued a decision in this matter to the Claimant, Richard Hansen. By decision dated January 13, 2016 (reference 03), IWD informed Mr. Hansen that the Department had determined that he was overpaid \$2,392.00 between January 18, 2015 and June 20, 2015, because he incorrectly or failed to report earnings from O’Reilly Automotive Inc. and REM Iowa Community Services. Mr. Hansen filed an appeal on May 14, 2016. The undersigned was provided with no documentation indicating what followed from that appeal. Hansen filed a second appeal on March 20, 2017 which indicated he was filing an appeal from a decision issued March 16, 2017. No such decision was provided by the Appellant or the Department.

The case was transmitted from IWD to the Department of Inspections and Appeals on May 10, 2017 to schedule a contested case hearing. Notice of Telephone Hearing was mailed to the parties on June 6, 2017, setting a hearing date of June 29, 2017 at 9:30 a.m. Mr. Hansen appeared and testified on his own behalf. The Department did not send a representative to the hearing.

Administrative notice was taken of documents in the file, which included the following as labeled by this administrative tribunal for the sake of convenience:

From IWD:

1. Investigation documents dated 1/5/16, including audit for reported wages.
2. Decision Overpayment worksheet
3. Notice of Decision regarding overpayment dated January 13, 2016
4. Notice of Appeal dated March 10, 2017
5. Notice of Appeal dated May 14, 2016

From the Appellant:

- A. Spreadsheet

ISSUES

Three issues were certified for appeal by IWD: 1) whether Mr. Hansen filed a timely appeal; 2) whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and if so, whether the amount of overpayment was correctly calculated; and 3) whether IWD properly imposed a fifteen percent penalty because the overpayment was a result of misrepresentation.

FINDINGS OF FACT

In 2015, the Department was in contact with Richard Hansen regarding their belief that he was overpaid unemployment insurance benefits. (Exhibit 1; Hansen testimony) On January 5, 2016, IWD investigator Kasandra Ellenwood met with Mr. Hansen regarding this overpayment and took his statement. (Exhibit 1) Following that meeting, on January 13, 2016, IWD sent to Mr. Hansen a notice, declaring that he had been overpaid \$2,392 between January 18, 2015 and June 20, 2015, because he incorrectly or failed to report earnings from O'Reilly Automotive Inc. and REM Iowa Community Services. (Exhibit 3)

The Claimant filed an appeal from that decision on May 14, 2016. (Exhibit 5) IWD's records reflect that Mr. Hansen filed a notice of appeal again on March 20, 2017. Mr. Hansen's appeal indicates he was appealing from an IWD decision dated March 16, 2017. (Exhibit 4) The Department did not provide the undersigned with any decision of that date, nor did a representative appear on behalf of the Department to clarify whether there was such a decision.

Richard Hansen testified at hearing on his own behalf, stating he originally appealed the Department's determination in May of 2016. He thought he was filing his

unemployment correctly. He never received a handbook. He ran out of benefits early. He stated if he would have filed correctly he could have kept going with his benefits. When asked why he did not appeal until May, he stated, “No reason.” He stated he could not give the undersigned an answer. When they got the packet in early May, they sent the appeal in. He stated he did not remember receiving the January 13, 2016 decision from the Department. Hansen stated he has some problems receiving mail because he lives out in the country. He stated his address has not changed. (Hansen testimony)

When asked why he appealed in March of 2017, he stated he appealed when he and his wife filed their taxes and the state garnished their tax refund to pay for the overpayment. (Hansen testimony)

REASONING AND CONCLUSIONS OF LAW

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.¹ IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.²

An individual commits a misrepresentation on a claim for unemployment benefits when that individual has received any sum as benefits while the individual was disqualified from receiving benefits. The individual shall be liable to have the sum deducted from any future benefits payable to the individual or shall be required to repay the Department the amount received by the individual.³

Before determining whether the Department’s decision in assessing an overpayment and a penalty was correct, it must first be determined whether Mr. Hansen filed a timely appeal from the January 5, 2016 decision from IWD.

Iowa Code § 96.6(2) requires that an appeal of an IWD 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. *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979). That is, if this administrative tribunal finds that Mr. Hansen could have appealed in a timely manner but failed to do so, this tribunal cannot rule on the substantive issues.

In an IWD appeal, the Claimant bears the burden of proof to show that the agency’s decisions were wrong. Mr. Hansen did not timely file an appeal from the January, 2016 decision. He waited approximately four months before filing his appeal. When asked why he did not appeal the January 5, 2016 decision earlier than May 14, 2016, Hansen’s response was essentially that he had no reason. Mr. Hansen has not met his burden to

¹ Iowa Code § 96.3(7) (2015).

² *Id.*

³ *Id.* § 96.16(4).

prove that he did not have a reasonable opportunity to appeal in a timely manner.

When public benefits are at stake, there is an accountability required of the recipient that cannot be ignored. Mr. Hansen was put on clear notice by the January 5th decision that he could be required to repay some of his 2015 unemployment benefits. Because there was no timely appeal from the January 5, 2016 decision of IWD, the undersigned cannot address the merits of that decision. IWD's decision of overpayment and misrepresentation must be affirmed.

Mr. Hansen filed a second Notice of Appeal on March 20, 2017. He appears to believe he is appealing a decision issued by the Department on March 16, 2017. As noted earlier, the undersigned was not provided with any decision of that date by IWD. From his statement at hearing, it appears that he may have been attempting to appeal a state tax offset. As the undersigned has no documentation regarding a decision issued by IWD in March of 2017 and no such issue was certified on appeal, this decision solely addresses the appeal from the January 5, 2016 decision and does not address any other decision that may have been issued by IWD or any other agency.

DECISION

For the foregoing reasons, IWD's decision dated January 5, 2016 is **AFFIRMED**. IWD shall take any action necessary to implement this decision.

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