

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 08-IWDUI-045
OC: 04/19/98
Claimant: Appellant (4)

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 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.

HAROLD L SLEDGE
704 22ND AVENUE SW
ALTOONA IA 50009

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.

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

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

April 18, 2008

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated July 6, 1999, reference 08, which held that the claimant was overpaid unemployment benefits in the amount of \$434.00, because he incorrectly reported wages earned with Southeast Polk Community Schools during a twelve-week period from October 4, 1998 to December 26, 1998.

After due notice was issued, a hearing was scheduled and held in Des Moines, Iowa on April 16, 2008. The claimant participated. Investigation and Recovery, submitted written documentation in lieu of participation in the hearing. Department Exhibits One, and Two. And Claimant Exhibit A, was admitted as evidence into the record.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having examined all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits with an effective date of April 19, 1998. The department audited his claim for the fourth quarter of 1998, and the first quarter of 1999.

The claimant wrote letters to Investigator Heidinger on June 13, 1999, and June 22, 1999, after he learned the department was auditing his claim for the fourth quarter of 1998. In his June 22 letter, he acknowledges that the department audit shows he is overpaid benefits \$434 during the period from October 4, 1998 to December 26, 1998.

The department issued the \$434 overpayment decision on July 6, 1999, and it shows that it was mailed to an address in Indianola, Iowa, not the claimant's address of record in Altoona, Iowa. The claimant does not recall receiving the decision. The claimant filed a recent appeal dated March 24, 2008 from the overpayment decision.

Later, the department concluded its audit of the claimant's first quarter 1999 unemployment with a determination that he was overpaid benefits \$199. The claimant appealed this decision (that was mailed to his address of record), and after a telephone hearing on the overpayment, an administrative law judge affirmed the overpayment due to an untimely appeal by the claimant.

Investigation and Recovery offered as evidence the records and documents contained in the claimant's file, as Investigator Heidinger is no longer an employee of the department. The department offered no document that showed the claimant was put on notice after the department decision was issued on July 6, 1999 that he was overpaid benefits \$434 for the fourth quarter of 1998.

REASONING AND CONCLUSIONS OF LAW:

The sole issue considered in this appeal is whether the claimant filed a timely appeal from the July 6, 1999, department decision.

Iowa Code Section 96.6-2 provides:

2. Initial determination. 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 a decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The administrative law judge concludes that the claimant has effected a timely appeal from the July 6, 1999 department decision pursuant to Iowa Code section 96.6-2. The decision shows that the department erred by failing to mail it to the claimant's address of record in Altoona, Iowa rather than Indianola, as was done so in this case. The claimant did not recall ever receiving the decision, and the department failed to provide any evidence the claimant either knew or should have know of its existence.

The claimant did receive a second overpayment decision (\$199), and he filed a late appeal that was denied for that reason. It is reasonable to believe that the claimant may have thought at the time that this was the end of the matter regarding the department audit.

Since the claimant's delay in filing a more timely appeal is due to department err (871 IAC 24.35(2)), he should be given an opportunity for a hearing on the \$434 overpayment.

DECISION:

The claimant filed a timely appeal from the Iowa Workforce Development Department decision of July 6, 1998, reference 08. The claimant and the department will receive a further notice for an in-person hearing to determine whether the claimant is overpaid benefits \$434 for the fourth quarter of 1998.

rls