

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

Appeal Number: 10-IWDUI-251
OC: 05/17/09
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MICHAEL HUFF
17 DUDLEY ROAD
WILTON, CT 06897-3508

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50319

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)

September 9, 2010
(Dated and Mailed)

Iowa Code section 96.6-2 – Timeliness of Appeal
Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE

Michael Huff filed an untimely appeal from a decision by Iowa Workforce Development dated January 5, 2010, reference 01, holding he was overpaid benefits in the amount of \$434 for the week ending May 30, 2009 because he failed to report vacation pay received from Principal Life Insurance.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals and scheduled for hearing. A Notice of Telephone Hearing was mailed to all parties on August 12, 2010. On September 7, 2010, a telephone appeal hearing was held before Administrative Law Judge Kerry Anderson. Appellant Michael Huff appeared and presented testimony. No one appeared on behalf of IWD. The documents contained in the administrative file were numbered 1-8 and were admitted into evidence without objection. Additionally, this official notice was taken of a decision issued by Administrative Law Judge Beth A. Scheetz in Appeal No. 10A-UI-05622-S2T which was captioned Michael Huff v. Iowa Workforce Development.

ISSUES

Whether Appellant had good cause for failing to file a timely appeal.

Whether the Department correctly determined that the claimant was overpaid unemployment insurance benefits and, if so, whether the Department correctly calculated the overpayment.

FINDINGS OF FACT

Michael Huff filed a claim for unemployment benefits with an effective date of May 17, 2009. In December 2009, Huff was contacted by IWD Investigator Irma Lewis who informed him he had been overpaid unemployment insurance benefits in the amount of \$434 for the week ending May 30, 2009 because he failed to report the receipt of vacation pay. Huff repaid the requested amount. (Huff testimony).

IWD also, unbeknownst to Huff, issued a decision on January 5, 2010, reference 01, holding that he had been overpaid the \$434 for the week ending May 30. That decision informed Huff he had the right to appeal and provided the instructions for appealing. The decision was sent to an address in Clive, Iowa. At the time Huff was living in Connecticut. He did not receive the letter. (Document No. 4; Huff testimony).

Subsequently, in April 2010, Huff received another decision from IWD holding he had been overpaid benefits for an additional two weeks based on the receipt of more vacation pay. Huff timely appealed that decision and, on May 25, 2010, Administrative Law Judge Beth Sheetz issued a ruling reversing the same as the pay Huff received was "PTO", a combination of sick time and vacation time. (Administrative Law Judge Decision, Appeal No. 10A-UI-05622-S2T).

Huff subsequently filed this appeal from the January 5, 2010, reference 01 decision.

REASONING AND CONCLUSIONS OF LAW

A. Good Cause for Failing to File a Timely Appeal

The record in this case shows that far more than ten calendar days elapsed between the mailing date of each decision and the date this appeal was filed. The Iowa Supreme Court has declared the requirement of filing appeals within the time allotted by statute is jurisdictional.¹ Failure to file a timely appeal deprives the undersigned of authority over the original decision unless there is evidence the claimant was deprived of a reasonable opportunity to file the appeal on a timely basis.²

The evidence in this case demonstrates that Michael Huff was deprived of the opportunity to file a timely appeal. The decision, including an explanation of his appeal rights, was not sent to his current address and he did not receive it. Huff was therefore not informed of his right to appeal or the deadline for filing an appeal. This constitutes good cause for missing the appeal deadline. The merits of his appeal may therefore be addressed.

B. Overpayment of Benefits

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.³

In this case, the claimed overpayment is due to the Department's allegation Huff failed to report vacation pay.

If an employer makes a payment of vacation pay or pay in lieu of vacation, the employer may designate to the Department the period to which the payment should be allocated. In order for the employer's designation to be effective, it must be made to the Department in writing within 10 calendar days after the employer is notified of the individual's claim.⁴

¹ *Franklin v. Iowa Department of Job Service*, 277 N.W.2d 877, 881 (Iowa 1979).

² *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373, 377 (Iowa 1979), *Hendren v. Iowa Employment Security Council*, 217 N.W.2d 255 (Iowa 1974).

³ Iowa Code § 96.3(7)(a) (2009).

⁴ Iowa Code § 96.5(7)(b) (2009).

Generally speaking, vacation pay is deemed wages.⁵ If an employer, as here, does not designate the time period to which the vacation payment should apply, “[p]ayments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter.”⁶

The Department’s regulations make clear that if the employer does not designate the time period of the vacation pay, the entire amount is applied to the one-week period starting on the first workday following the last day worked.⁷

Here, the documents show that Principal Life Insurance reported having paid Huff the sum of \$4281 during the week ending May 30, 2009. Principal coded the payment as “non regular pay type” and entered a “1” on the Wages Cross Match form submitted to IWD. There is nothing in the record and no IWD representative appeared to explain what a “1” means.

Michael Huff, however, testified that the payment was for “PTO” (paid time off) which included vacation and sick leave. There is no evidence in the record as to how much, if any, of the \$4281 was attributable to vacation as opposed to sick leave. Under these circumstances, there is insufficient evidence in the record to support IWD’s determination that the money should have been reported and its decision should be reversed.

DECISION

The Department’s decision dated January 5, 2010, reference 01, is REVERSED. The claimant has not been overpaid benefits.

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⁵ Iowa Code § 96.5(7)(a) (2009).

⁶ Iowa Code § 96.5(7)(d) (2009).

⁷ 871 Iowa Administrative Code (IAC) 24.16(3)-(4).