

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

Appeal Numbers: 11IWDUI140-141
OC: 11/09/08, 11/08/09
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

EDGAR CORREA-MORENO
2017 MAPLE STREET
DES MOINES, IA 50317-5268

INVESTIGATIONS AND RECOVERY, IWD
IRMA LEWIS, INVESTIGATOR
150 DES MOINES ST.
DES MOINES, IA 50309

JOE WALSH, 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)

June 29, 2011

(Dated and Mailed)

871 IAC 26.14(7) – Request to Reopen the Record
Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.4-3 – Eligibility for Benefits
Iowa Code § 96.3-7 – Recovery of Overpayment Benefits

STATEMENT OF THE CASE

Claimant Edgar Correa-Moreno appealed from two decisions issued by Iowa Workforce Development (“IWD”), dated November 30, 2009, reference 02, and April 4, 2011, reference 01. In reference 02, IWD found Correa-Moreno was not eligible to receive unemployment insurance benefits because IWD’s records indicated he had not provided proof he was a citizen or legally authorized to work in the United States. IWD denied

benefits effective November 23, 2009. In reference 01, IWD found Correa-Moreno had been overpaid \$816 for the two weeks ending December 5, 2009 due to the November 30, 2009 decision disqualifying Correa-Moreno for not showing proof of citizenship or legal residency. IWD received Correa-Moreno's appeals on April 27, 2011. Correa-Moreno signed the appeals on April 22, 2011.

IWD transmitted the cases to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the appeal files to Correa-Moreno. A contested case hearing was scheduled for June 27, 2011 at 11:00 a.m. IWD requested a Spanish interpreter for the hearing. A Spanish interpreter was available through Language Line Services.

On June 27, 2011, a telephone hearing was held before Administrative Law Judge Heather L. Palmer at 11:00 a.m. Correa-Moreno did not appear, and did not follow the instructions on the Notice of Telephone Hearing. I waited five minutes before proceeding with the hearing. Matt Mardesen appeared and testified on behalf of IWD. Exhibits 1 through 7 were admitted into the record.

ISSUES

Whether the Claimant has established good cause to reopen the record.

Whether the Claimant filed a timely appeal.

Whether IWD correctly determined the claimant is ineligible to receive unemployment insurance benefits.

Whether IWD correctly determined that the Claimant was overpaid unemployment benefits and, if so, whether the overpayment was correctly calculated.

FINDINGS OF FACT

Correa-Moreno received unemployment insurance benefits in 2009. IWD conducted an audit of Correa-Moreno's case. Investigator Mary Piagentini sent Correa-Moreno a Notice to Report to mail in copies of his INS documents no later than November 23, 2009. Piagentini did not receive the documents from Correa-Moreno.

On November 30, 2009, IWD issued a decision, reference 02, finding Correa-Moreno was not eligible to receive unemployment insurance benefits as of November 23, 2009 because IWD's records indicated he had not provided proof he was a citizen or legally authorized to work in the United States. The decision states, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 12/10/09, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 6). The decision was sent to the same address listed on the Notice of Telephone Hearing. IWD did not receive an appeal of the decision until April 27, 2011. Correa-Moreno signed the appeal on April 22, 2011.

IWD further concluded Correa-Moreno received an \$816 overpayment for the two weeks ending December 5, 2009, due to the November 30, 2009 decision which disqualified him for not showing proof of citizenship or legal residency. The decision dated April 4, 2011, reference 01, states, in part, “THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 04/14/11, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.” (Exhibit 2). IWD did not receive Correa-Moreno’s appeal until April 27, 2011. Correa-Moreno signed the appeal on April 22, 2011.

REASONING AND CONCLUSIONS OF LAW

I. Contact After the Record was Closed

Thirty minutes after the scheduled start of the hearing, and after the record had been closed, Correa-Moreno’s daughter left a voicemail message on the administrative law judge’s telephone stating her father missed the hearing because he believed the administrative law judge would contact him at the time of the hearing and that he was waiting for a call.

If a party responds to the notice of hearing after the record is closed, the administrative law judge “shall not take the evidence of the late party.”¹ Instead, the administrative law judge inquires why the party was late in responding to the notice of hearing.² The administrative law judge may reopen the record and cause a new notice of hearing to be issued to the parties if good cause is shown.³ If good cause is not shown for the party’s late response to the notice of hearing the record “shall not be reopened.”⁴ “Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.”⁵

The Notice of Telephone Hearing provided instruction for how to participate in the hearing. IWD followed the instructions, Correa-Moreno did not. Correa-Moreno’s first language is Spanish. A Spanish interpreter was available at the hearing through Language Line Services. Correa-Moreno could have requested assistance prior to the hearing from this office or from IWD; he did not. Correa-Moreno did not appear at the time of the scheduled hearing. His daughter did not contact this office until thirty minutes after the scheduled start of the hearing and reported her father believed the administrative law judge would contact him at the time of hearing and that he was waiting for a call. Failure to read the Notice of Telephone Hearing does not constitute good cause for reopening the record.⁶ I conclude Correa-Moreno has not established good cause for reopening the record.

¹ 871 IAC 26.14(7)b.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 26.14(7)c.

⁶ *Id.*

II. Timeliness of Appeals

Iowa Code section 96.6(2) requires a claimant to file an appeal of a representative's decision "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.⁷

The decision dated November 30, 2009, reference 02, states, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 12/10/09, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 6). IWD did not receive Correa-Moreno's appeal until April 27, 2011. Correa-Moreno signed the appeal on April 22, 2011. Correa-Moreno's appeal was untimely. He did not appear at hearing to explain why his appeal was untimely. The decision was sent to the same address listed on the Notice of Telephone Hearing.

The decision dated April 4, 2011, reference 01, states, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 04/14/11, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 2). IWD did not receive Correa-Moreno's appeal of the decision until April 27, 2011. Correa-Moreno signed the appeal on April 22, 2011. Correa-Moreno's appeal was untimely. He did not appear at hearing to explain why his appeal was untimely. The decision was sent to the same address listed on the Notice of Telephone Hearing. Correa-Moreno's appeals were untimely.

DECISION

Correa-Moreno has not established good cause to reopen the record. Correa-Moreno failed to timely appeal. The representative's decisions, dated November 30, 2009, reference 02, and dated April 4, 2011, reference 01, that Correa-Moreno is ineligible to receive unemployment insurance benefits, and that he received a \$816 overpayment are affirmed.

hlp

⁷ *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979).