

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

**Appeal Number:** 08-IWDUI-033  
**OC:** 12/16/07  
**Claimant:** Appellant (6)

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, 4<sup>TH</sup> 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.

**VICENTE A PORTILLO**  
**2198 E VIRGINIA AVENUE APT# 27**  
**DES MOINES IA 50320-1271**

STATE CLEARLY

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

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.

DAN ANDERSON, IWD

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(Administrative Law Judge)

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February 29, 2008

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(Decision Dated & Mailed)

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871IAC26.11 – Motion to Dismiss Appeal

#### STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated February 14, 2008, reference 05 that held he was overpaid benefits \$65 for the week ending January 12, 2008, because he failed to report wages earned with DES Staffing Services.

A telephone hearing was scheduled for March 3, 2008, pursuant to due notice. Prior to the hearing being held, Investigator Lewis requested this appeal to be dismissed.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds that: After the claimant filed his appeal, Investigator Lewis rechecked the employer's wage report, and she learned from it that the wage information was provided for the wrong year.

Investigator Lewis caused the department to issue a new decision dated February 25, 2008, reference 06 that eliminates the overpayment in this matter.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the department's motion to dismiss this appeal should be approved.

**871 IAC 26.11 provides:**

(1) No technical form for motions is required. Nevertheless, pre-hearing motions must be in writing, state the grounds for relief and state the relief sought.

The administrative law judge has reviewed the records and files herein and concludes that the motion to dismiss this appeal should be approved. The department has eliminated the overpayment in this matter by issuing a new decision. There is no further issue to adjudicate.

**DECISION:**

The decision of Iowa Workforce Development dated February 14, 2008, reference 05 is SET ASIDE, and the department decision dated February 25, 2008 reference 06 that eliminates the overpayment is controlling in this matter. This appeal is dismissed.

rls