

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

**Appeal Number:** 09-IWDUI-163  
**OC:** 02/24/08  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**ROBERT L. CASKY**  
**346 1ST ST. SW**  
**BADGER, IA 50516-7534**

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

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.

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(Administrative Law Judge)

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August 26, 2009  
(Dated and Mailed)

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Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits  
Iowa Code section 96.16-4 – Misrepresentation  
Iowa Code section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE**

Robert Casky filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated April 22, 2009, reference 01. In this decision, the Department determined that Mr. Casky was overpaid \$286 in unemployment insurance benefits for the week of May 11 through May 17, 2008. The decision states that the overpayment resulted from the appellant's failure to report wages earned with Electrolux Home Product.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 6, 2009 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on August 7, 2009. On August 17, 2009, a telephone hearing was held before Administrative Law Judge Laura Lockard. Investigator Jane Connor represented the Department and presented testimony. The Department submitted Exhibits 1 through 7 which were admitted into the record as evidence. The appellant did not appear for the hearing.

### **ISSUES**

Whether the appellant filed a timely appeal.

Whether the Department correctly determined that the claimant was overpaid unemployment insurance benefits.

Whether the Department correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

### **FINDINGS OF FACT**

The Department's decision that is being appealed was issued on April 22, 2009. The decision states that it becomes final unless an appeal is postmarked by May 2, 2009 or received by the Department's appeals section on that date.

Robert Casky mailed a letter of appeal to the Department that was postmarked July 28, 2009. The Department received the letter on July 30, 2009.

### **REASONING AND CONCLUSIONS OF LAW**

Iowa Code section 96.6(2) requires that an appeal of a 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.<sup>1</sup>

Mr. Casky's appeal was filed over three months after the Department's decision was issued. The appeal was not timely. Mr. Casky is therefore foreclosed from challenging the decision. Since Mr. Casky's appeal was not filed timely, I do not have jurisdiction to consider whether the Department was correct in assessing an overpayment and in determining that the overpayment was due to misrepresentation.

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<sup>1</sup> *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

**DECISION**

The Department's decision dated April 22, 2009 is AFFIRMED. The claimant has been overpaid benefits in the amount of \$286 due to misrepresentation.

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