

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

Appeal Number: 10IWDUI244-46

OC: 6/28/09

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, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

**DARRYL KOCH
P.O. BOX 473
LEGRAND, IA 50142-0473**

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

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50309**

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.

DAN ANDERSON, IWD

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)

November 3, 2010

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Daryl Koch filed an appeal from three decisions issued by Iowa Workforce Development (the Department). In the first decision, dated June 3, 2010 (reference 01), the Department determined that Mr. Koch was overpaid \$1,930 in unemployment insurance benefits for five weeks between August 30, 2009 and October 3, 2009. The decision states that the overpayment resulted from the appellant failing to report wages earned with Seedorff Masonry Inc. In the second decision, dated June 8, 2010 (reference 02), the Department determined that Mr. Koch was ineligible to receive unemployment insurance benefits because he failed to report to his local Workforce Development center when requested. This decision denied benefits as of May 30, 2010. In the third decision, dated June 9, 2010 (reference 04), the Department determined that Mr. Koch was overpaid \$3,979 in unemployment insurance benefits for 11 weeks between September 27, 2009 and December 12, 2009. The decision states that the overpayment resulted from a failure to report wages earned with Seedorff Masonry Inc.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 5, 2010 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties scheduling a hearing for August 23, 2010. The Department requested a continuance of the hearing because a witness was unavailable. The appellant did not object to the Department's request. The hearing was continued to September 3, 2010. On September 3, 2010, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Appellant Daryl Koch appeared and presented testimony. The Department submitted an appeal file containing Exhibits 1 through 16 which were admitted as evidence in the case. Mr. Koch submitted Exhibit A, which was admitted as evidence in the case. No representative from the Department appeared for the hearing.

ISSUES

1. Whether the appellant filed a timely appeal.
2. Whether the Department correctly determined that the appellant is not eligible to receive unemployment insurance benefits.
3. Whether the Department correctly determined that the appellant was overpaid unemployment benefits and, if so, whether the overpayment was correctly calculated.
4. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

FINDINGS OF FACT

The decisions that Daryl Koch has appealed are dated June 3, June 8, and June 9, 2010. All of the decisions were mailed to Mr. Koch at P.O. Box 354, Conrad, Iowa 50621-0354. This address is Mr. Koch's previous address. His current address is P.O. Box 473, LeGrand, Iowa 50142-0473. He shares that post office box with his girlfriend, Dee Hon. When they moved from Conrad to LeGrand in approximately January or February, 2010, they placed a forward order on their post office box in Conrad. Neither Mr. Koch nor Ms. Hon know how long mail was forwarded from that address. (Koch, Hon testimony).

Each of the decisions stated that the decision would become final unless an appeal was postmarked or received by the Department's appeals sections within 10 days of the date of the decision. (Exh. 2, 7, 14). Mr. Koch filed his appeal of these decisions on July 21, 2010. Mr. Koch wrote in his appeal that he never received the decisions regarding the claimed overpayments. (Exh. 1).

The effective date of the claims that these decisions relate to is June 28, 2009. From the evidence in the record, it appears Mr. Koch was receiving unemployment benefits at the time these decisions were issued. One of the decisions is a disqualification from benefits effective May 30, 2010. Additionally, Mr. Koch testified that he learned of the overpayment and ineligibility decisions when he went into his local Department office

around the end of June, 2010 to inquire about why his benefits had stopped. (Koch testimony).

Mr. Koch testified at hearing that since his benefits were issued directly to his debit card and did not come through the mail he had not informed the Department of his new address in the LeGrand by the time these decisions were issued. (Koch testimony).

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 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.¹

The Department made its best effort to inform the appellant of its decisions in a timely manner. The decisions were mailed to the appellant at his last known address. The appellant was receiving benefits at the time the decisions were issued and had the responsibility to provide the Department with his current address, despite the fact that his benefits were issued to a debit card rather than mailed to him.

Given that the appellant's appeal was untimely, I have no jurisdiction to consider the merits of the appeal.

DECISION

The appellant's appeal is dismissed as untimely. The Department shall take any action necessary to implement this decision.

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