

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JOHNNY LEE
818 15TH STREET
MASON CITY, IA 50401

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

DAN ANDERSON, IWD

Appeal Number: 11IWDUI031-32, 061
OC: 03/07/10
Claimant: Appellant (1, 6)

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.***

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)

April 29, 2011

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Johnny Lee filed an appeal from three decisions issued by Iowa Workforce Development (the Department). In the first decision, dated December 13, 2010 (reference 07), the Department determined that the appellant was not eligible to receive unemployment insurance benefits because he failed to report to his local Workforce Development center as requested. Benefits were denied as of December 10, 2010. In the second decision, dated December 14, 2010 (reference 08), the Department determined that the appellant was not eligible to receive unemployment insurance benefits because he was in jail and therefore not available for work. Benefits were denied as of November 2, 2010. In the third decision, dated December 21, 2010 (reference 09), the Department determined that the appellant was overpaid \$770 in unemployment insurance benefits for the weeks between October 31 and December 4, 2010. The decision stated that the overpayment resulted from the claimant's disqualification for not being able and available for work.

The cases were transmitted from Workforce Development to the Department of Inspections and Appeals on February 15, 2011 and March 10, 2011 to schedule a contested case hearing.¹ Notices of Telephone Hearing were mailed to all parties on February 23, 2011 and March 18, 2011. On March 25, 2011, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Karen Von Behren represented the Department and presented testimony. Appellant Johnny Lee appeared and presented testimony. Exhibits A through F were submitted by the Department and admitted into the record as evidence.

ISSUES

1. Whether the appellant filed a timely appeal.
2. Whether the Department correctly determined that the appellant was ineligible to receive unemployment insurance benefits.
3. Whether the Department correctly determined that the appellant was overpaid unemployment insurance 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

Johnny Lee filed a claim for unemployment insurance benefits with an effective date of March 7, 2010. Mr. Lee made claims for and received unemployment insurance benefits during the months of November and December, 2010.

In December, 2010, the Department received information from the Iowa Department of Corrections that indicated Mr. Lee was incarcerated during a time when he filed claims and received unemployment insurance benefits. (Von Behren testimony). After receiving this information, investigator Karen Von Behren mailed a letter to Mr. Lee on December 2, 2010 scheduling a telephone interview for him on December 10, 2010 at 8:30 AM. The letter indicated that Mr. Lee would be called at 641-903-8034, the telephone number that he had previously provided to the Department. The letter indicated that the subjects of the interview would be: 1) the issue of whether he was able and available to work because of incarceration beginning November 2, 2010; and 2) a potential overpayment of unemployment insurance benefits. The letter directed Mr. Lee to contact Ms. Von Behren at a telephone number listed in the letter if he would be at a different number on the date of the interview. The letter was mailed to Mr. Lee at 412 12th Street NW, Mason City, IA 50401-1136. (Exh. A-2).

Ms. Von Behren called Mr. Lee at the number listed on the December 2 letter on

¹ The appellant's appeals of the December 13 and December 21 decisions were transmitted on February 15, 2011. The appellant's appeal of the December 14 decision was transmitted on March 10, 2011.

December 10, 2010 at 8:30 AM. She received an automated message indicating that the subscriber was not available or had traveled outside the coverage area. Ms. Von Behren called again on December 11, 2011 and got the same message. (Exh. A-2, Von Behren testimony).

As a result of Mr. Lee not being available for the telephone interview on December 10, the Department issued a decision dated December 13, 2010 denying Mr. Lee benefits as of December 10, 2010. The decision states that it is based upon Mr. Lee's failure to report to his local Workforce Development center after being mailed a notice to do so. The decision states that it will become final unless an appeal is postmarked or received by the Department by December 23, 2010 or, if the date falls on a weekend or legal holiday, the next working day after that date. The notice was mailed to the same 12th Street address in Mason City to which the December 2 letter was sent. (Exh. F; Von Behren testimony).

Also on December 2, 2010, Ms. Von Behren sent a letter to Mr. Lee, addressed to the Iowa Medical and Classification Center (IMCC) in Coralville, Iowa, where Mr. Lee was incarcerated. In that letter, Ms. Von Behren informed Mr. Lee that she was conducting an audit of his unemployment insurance claim. The letter stated that the Department had received information that Mr. Lee had been incarcerated since November 2, 2010 and that unemployment claims for the weeks ending November 6, 2010 through the current date had been filed and paid during the incarceration period. The letter informed Mr. Lee that he had until December 13, 2010 to respond. (Exh. A-7).

Mr. Lee responded to Ms. Von Behren by letter dated December 7, 2010. In the letter, he indicated that he was currently incarcerated. He stated that he had not planned to be incarcerated for such a long period of time. He reported that he had asked his daughter not to call in his weekly claims anymore. He indicated as well that his daughter made all his weekly claims due to his not having a phone. He stated that he was unaware that his daughter had continued to call in for him during the time period he was incarcerated. (Exh. A-8).

After receiving the December 7 letter from Mr. Lee, the Department issued a decision dated December 14, 2010 finding that Mr. Lee was not eligible to receive unemployment insurance benefits effective November 2, 2010. The decision states that the disqualification was based on the fact that Mr. Lee was not available for work due to his incarceration. The decision states that it will become final unless an appeal is postmarked or received by the Department by December 24, 2010 or, if the date falls on a weekend or legal holiday, the next working day after that date. The decision was mailed to Mr. Lee at the IMCC address in Coralville. Before the decision was mailed, Ms. Von Behren confirmed that Mr. Lee was still at that address through information obtained from the Department of Corrections. (Exh. A-4, A-10; Von Behren testimony).

During the weeks ending November 6, 2010 through December 4, 2010, Mr. Lee received \$154 in weekly unemployment insurance benefits; \$129 was his weekly benefit amount, plus he received an additional \$25 each week in federal stimulus funds. Mr. Lee received \$770 in total benefits during that time period. (Von Behren testimony; Exh. A-14).

As a result of the decisions disqualifying Mr. Lee from receiving benefits effective November 2, 2010, the Department issued a decision on December 21, 2010 that determined Mr. Lee was overpaid \$770 in benefits for the five weeks between October 31, 2010 and December 4, 2010. The decision indicates that the overpayment is a result of misrepresentation. The decision was mailed to Mr. Lee at the IMCC address in Coralville and states that it will become final unless an appeal is postmarked or received by the Department by December 31, 2010 or, if the date falls on a weekend or legal holiday, the next working day after that date. (Exh. B).

Mr. Lee appealed the Department's decisions by letter postmarked December 30, 2010. In the letter, he indicated that his daughter was making all of his important phone calls during his incarceration. He stated that he had his daughter call in once or twice pre-incarceration when he was unable to call in himself. He also stated that he had not claimed any unemployment insurance benefits since November 2, 2010. (Exh. E-1).

At hearing, Mr. Lee testified that he was incarcerated after a court date in Mason City, Iowa; he had understood that he would go to court and be released and had not planned on a lengthy incarceration. He asked his daughter to deal with all of his "most important things" while he was incarcerated. Mr. Lee had all his information regarding unemployment insurance benefits, along with his bills, on his desk at home. Mr. Lee's PIN number, which is necessary to call in an unemployment claim, was written on the documents on his desk. Once he realized he was going to remain incarcerated, Mr. Lee asked his daughter to go to his desk and conduct his most important business. Mr. Lee testified that he did not give his daughter specific instructions to call in his unemployment insurance claims. (Lee testimony).

When an individual initially files a claim for unemployment insurance benefits, he or she receives a booklet that contains the instruction not to share the PIN number needed to make a claim with anyone. Each week when a claimant calls in, he is asked to identify himself as the person making the claim by entering his social security number and PIN number. Mr. Lee acknowledged that he was probably told not to share his PIN number with anyone by someone at his local Workforce Development center when he filed for benefits. (Von Behren testimony; Lee testimony).

REASONING AND CONCLUSIONS OF LAW

A. Timeliness of Appeal

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.²

The appellant's appeal of the decisions at issue here was postmarked December 30, 2010. His appeal of the December 21, 2010 overpayment decision was clearly timely.

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

The appeal letter was not postmarked by the deadlines to appeal the December 13 and December 14, 2010 decisions. The December 13, 2010 decision was not sent to the appellant at the correct address; by the time that decision was mailed, the Department had information that the appellant was incarcerated at IMCC in Coralville. The fact that the decision was sent to an incorrect address might, under other circumstances, call into question the adequacy of the notice. Here, however, the December 14, 2010 decision was sent to Mr. Lee at the IMCC address, where he was located at the time of the decision. The December 14, 2010 decision denied benefits for an overlapping but longer time period than the December 13, 2010 decision. Consequently, the fact that Mr. Lee did not timely appeal the December 14 decision means that he is foreclosed from challenging his disqualification from benefits effective November 2, 2010. Even if he were able to appeal the December 13 decision, the disqualification outcome would not change.

I note that even if Mr. Lee had timely appealed the Department's December 14, 2010 decision, it is undisputed that Mr. Lee was incarcerated beginning November 2, 2010. In order to receive unemployment insurance benefits, an individual must be able to work, available for work, and be earnestly and actively seeking work.³ Mr. Lee clearly did not meet these requirements while incarcerated.

B. Overpayment

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department 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.⁴

Here, the alleged overpayment stems from the Department's determination that Mr. Lee was not eligible for benefits from November 2, 2010 onward because he was not available for work owing to being incarcerated. Having determined that Mr. Lee was ineligible for unemployment insurance benefits while he was incarcerated, it is fairly simple to conclude that Mr. Lee was overpaid unemployment insurance benefits during the weeks in question. Mr. Lee did not dispute the fact that benefits were paid during the weeks in question, nor did he dispute the amount of benefits the Department alleged were paid each week. Mr. Lee was overpaid unemployment insurance benefits in the total amount of \$770 for the weeks in question.

C. Misrepresentation

If a claimant is overpaid benefits as a result of misrepresentation, the Department may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the

³ Iowa Code § 96.4(3) (2009).

⁴ Iowa Code § 96.3(7)(a) (2009).

claimant's real or personal property and rights to property. A finding of misrepresentation is supported when an individual receives benefits while not eligible "by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact."⁵

Mr. Lee has presented conflicting information regarding manner in which claims were filed by his daughter prior to his incarceration. In his December 7, 2010 letter to Ms. Von Behren, he asserted that his daughter made all his unemployment insurance claim telephone calls owing to the fact that he had no phone. In his appeal letter to the Department, Mr. Lee indicated that he had his daughter call in his claims for him once or twice when he was unable to do so. At hearing, Mr. Lee seemed to indicate that his daughter had never called in a claim for him prior to his incarceration. He testified at hearing that his daughter must have found his PIN number in the packet of unemployment benefits information that he had sitting on his desk and decided to call in as part of taking care of his business. The fact that Mr. Lee presented three conflicting versions of his daughter's history of calling in claims prior to his incarceration calls into question his credibility.

Mr. Lee acknowledged that upon becoming incarcerated he directed his daughter to look on his desk, where his information related to unemployment benefits was located, and take care of his important business. The fact that Mr. Lee's daughter had apparently called in claims for her father in the very recent past, coupled with Mr. Lee's instruction to her to take care of his business, brings Mr. Lee's actions under the umbrella of misrepresentation. Mr. Lee did not testify that he took any steps to let his daughter know that she should stop calling in unemployment claims for him while he was incarcerated. Under these circumstances, the Department's determination that the overpayment in this case was due to misrepresentation is correct and must be affirmed.

DECISION

The appellant's appeal of the December 13 and December 14, 2010 decisions is dismissed as untimely. The Department's December 21, 2010 decision establishing an overpayment in the amount of \$770 as a result of misrepresentation is affirmed. The Department shall take any action necessary to implement this decision.

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⁵ Iowa Code § 96.16(4) (2009).