

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JUAN D ROA-CARVAJAL

Claimant,

and

IOWA WORKFORCE DEVELOPMENT

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HEARING NUMBER: 13B-UI-10211

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.3-7, 616.8-E

DECISION

FINDINGS OF FACT:

The administrative law judge issued a decision in this matter. The decision was favorable to the Claimant. Iowa Workforce Development appealed the decision of the administrative law judge to the Employment Appeal Board. Iowa Workforce Development was not a party to the case before the Administrative Law Judge.

REASONING AND CONCLUSIONS OF LAW:

Background: The Claimant was charged an overpayment by the State of Wisconsin in the amount of \$4,752.00. Wisconsin and the Claimant agreed that he could repay this amount by having only half his benefits withheld. This did not alter the amount owed, but only the rate at which withholding occurred, much as with EUCU benefits. Pursuant to interstate agreements Iowa Workforce issued a decision stating that Iowa Workforce was withholding \$4752 from the Iowa claim. The Claimant appealed this determination and Administrative Law Judge Marlon Mormann issued a decision affirming the overpayment but setting the rate of recoupment at 50% of each benefit payment per the agreement between Claimant and Wisconsin. Workforce now appeals to the Board.

Appeals By NonParties: The Employment Appeal Board is empowered to hear appeals from decisions of Iowa Workforce Administrative Law Judges in unemployment matters. As part of its enabling legislation the Board can itself initiate review, permit parties to appeal, and may permit the representative whose decision is modified or reversed to appeal. Iowa §10A.601(4). Meanwhile, the Employment Security Law provides that only “any party” may appeal an Administrative Law Judge decision to the Board. Iowa Code §96.6(3)(b). The first question we face is how to reconcile the fact that §10A.601(4) allows appeals by representatives with the fact that §96.6(3)(b) only permits appeals by a “party.”

Normally, in such an instance, the more particular provision would prevail, meaning that the limitation to appeals by parties would prevail. Iowa Code §4.7. Here the Board is given regulatory power and has used it to allow review, on the Board’s own motion, of a decision of an Administrative Law Judge in an unemployment matter. Such review, however, may not occur if a party appeals, and must be initiated within 10 days of the Administrative Law Judge’s decision. 486 IAC 3.2(1). This can be reconciled with the limitation of appeals to parties by the distinction between an “appeal” and a “review” on the tribunal’s own initiative. Under this reasoning, appeals would still be limited to parties, and since chapter 96 is silent on *sua sponte* review, such review would not conflict with this limitation. Nevertheless we think that given the Board authority to pass regulations governing its appeal, Iowa Code §10A.601(6), it may be that the Board *could* allow for representative appeals in appropriately limited circumstances. The Board, however, has not done so. Instead the Board’s rules specifically limit unemployment appeals to “[a] **party** aggrieved by a decision of an administrative law judge...” 486 IAC 3.1(2)(emphasis added). The result is that unless and until the Board passes a rule to the contrary, only parties may appeal Administrative Law Judge decisions in unemployment matters.

Workforce Status As NonParty: Iowa Workforce has passed regulations describing when it is a party to a case. First, a “party” is a “person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.” 871 IAC 26.2. Thus the agency can be a party. When this occurs is specifically set out:

- c. The department of workforce development is a party to all contested case hearings in which it is the employer. it is a party to those contested case hearings involving issues of employer liability, employee/independent contractor status, fraudulent overpayment and administrative penalty in which it or any of its employees request the right to participate in the hearing by offering testimony and cross-examining witnesses for other parties.

871 IAC 26.14(1)(c). Thus Workforce is automatically a party in if it is the employer. One twist in the published rule is that there is a period after “employer” but the following word is not capitalized. Grammatically, it is clear the period is correct. Thus in cases where Workforce is the employer it is always a party. In four classes of cases Workforce may be a party if it so requests: (1) in employer liability cases (2) in misclassification cases (3) in fraudulent overpayment cases and (4) in administrative penalty cases. In any of these situations Workforce can participate as a party where “it or any of its employees request the right to participate in the hearing by offering testimony and cross-examining witnesses for other parties.” 871 IAC 26.14(1)(c). In cases where Workforce is a party its own Administrative Law Judge are prohibited by statute and rule from hearing the case. Iowa Code §17A.11(1)(a); 871 IAC 26.14(1)(b).

In the present case it is clear that Workforce is not a party. There is nothing in the record showing a request by Workforce to appear in the matter in order to offer testimony or examine witnesses. Further Administrative Law Judge Mormann is employed by Workforce and thus would be prohibited from hearing the case were Workforce a party. Finally, the case does not involve employer liability, misclassification, *fraudulent* overpayment, or an administrative penalty so far as we can tell.

Conclusion: Since only parties can appeal in unemployment cases, unless and until the Board passes a regulation to the contrary, and since Workforce was not a party to the underlying case, the appeal was filed by an entity without authority to file the appeal. For this reason the appeal must be and is dismissed.

DECISION:

The appeal from the Administrative Law Judge September 16, 2013 decision is **DISMISSED**. The decision of the administrative law judge remains in full force and effect.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

RRA/fnv