

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

Appeal Numbers: 09-IWDUI-202
09-IWDUI-203
09-IWDUI-204

OC: 06/28/09

Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**MICHAEL HOERNER
6006 NOTTINGHAM DRIVE
JOHNSTON, IA 501391-8744**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATION 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.

(Administrative Law Judge)

November 17, 2009

(Dated and Mailed)

Iowa Code Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Michael Hoerner filed an appeal from three decisions issued by Iowa Workforce Development. The first was issued on September 25, 2009, reference 02, and held Hoerner was not eligible for unemployment insurance benefits because he had removed himself from the labor market and was no longer available for employment. Benefits were denied as of August 16, 2009.

The second decision was issued on September 30, 2009, reference 01. That decision also held that

Hoerner was not eligible to receive unemployment insurance benefits because he had removed himself from the labor market and was no longer available for unemployment. This decision was issued after Hoerner reopened his unemployment claim and his former employer protested. Benefits were denied as of September 13, 2009.

The final decision involved in this appeal was issued on September 28, 2009, reference 03. That decision held Hoerner had been overpaid unemployment insurance benefits in the amount of \$1,158 for the period between August 16, 2009 and September 5, 2009 based on the reference 02 decision finding him ineligible for benefits.

A telephone hearing was scheduled and held on November 16, 2009. Notice of the hearing was mailed to all parties on November 3, 2009. The notices specifically instructed the parties to telephone a conference call center to participate in the hearing. Despite said instructions, Hoerner failed call in and the hearing was held without his participation. Workforce Development Investigator Irma Lewis participated on behalf of the department. Official notice was taken of the documents in the administrative record for each appeal. Workforce Development's Exhibits A, A-1, A-2, A-3, A-4, A-5, and B were admitted into the record.

FINDINGS OF FACT:

Michael Hoerner originally filed a claim for unemployment benefits effective June 28, 2009. On September 10, 2009 C.R. England, Inc. reported to Workforce Development that Hoerner had begun working for them on August 18, 2009. The employer further reported that Hoerner worked five days during the week ending August 22, 2009 and was paid gross wages of \$307.15. Hoerner worked six days during the week ending August 29, 2009 and earned \$368.58 in gross wages. He worked four days during the week ending September 5, 2009 and earned \$245.72 in gross wages. (Exh. A).

Based on the information obtained from the employer, Workforce Development issued a decision on September 25, 2009, reference 02, holding Hoerner was not eligible for unemployment insurance benefits because he was working sufficient hours to be considered employed, had therefore removed himself from the labor market and was no longer available for employment. Benefits were denied as of August 16, 2009. The decision specifically informed Hoerner that any appeal must be filed on or before October 5, 2009.

Prior to the above-referenced decision being issued, Hoerner reopened his unemployment claim. His former employer protested the reopening because of his present employment. A fact-finding interview was held, however, neither party attended. Subsequently, on September 30, 2009, the department issued a second decision (this on the reopened claim), reference 01. That decision also held Hoerner was not eligible to receive unemployment insurance benefits because he had removed himself from the labor market and was no longer available for unemployment. However, this decision held that benefits were denied as of September 13, 2009.¹ The decision specifically instructed Hoerner that any appeal must be filed on or before October 10, 2009.

Finally, on September 28, 2009, Workforce Development issued a third decision, reference 03. This decision held that Hoerner had received an overpayment of unemployment insurance benefits in the amount of \$1,158 for the weeks between August 16, 2009 and September 24, 2009 based on the decision (reference 02) that he was not eligible for benefits during that period of time. That decision

¹ It is unclear from the record how the fact-finder arrived at the September 13, 2009 date. As noted above, C.R. Holland, Inc. reported Hoerner began working on August 18, 2009. Because Holland's appeal was filed untimely, it is not necessary to resolve this discrepancy.

instructed Hoerner that he must appeal on or before October 8, 2009.

Claimant filed this appeal, which Workforce Development interpreted to be from all three decisions. The appeal was delivered to the Appeals Section by facsimile. The fax machine printed the date at the top of the document as October 16, 2009, a Friday. The Appeals Section date-stamped the appeal on October 19, 2009, the following Monday.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal has been filed in a timely manner.

Iowa law provides that, unless a claimant files an appeal within ten calendar days after notification of a decision was mailed to him or her, the department's decision regarding the payment of unemployment benefits shall become final.²

The record in this case shows that more than ten calendar days elapsed between the mailing date of each decision and the date this appeal was filed. The Iowa Supreme Court has declared the requirement of filing appeals within the time allotted by statute is jurisdictional.³ Failure to file a timely appeal deprives the undersigned of authority over the original decision unless there is evidence the claimant was deprived of a reasonable opportunity to file the appeal on a timely basis.⁴

There is no evidence in the present case that Hoerner was prevented in any way from filing timely appeals. He did not appear to present evidence.

The appeals filed in these cases are not timely.

DECISION:

The decisions of Iowa Workforce Development dated September 25, 2009, reference 02, September 30, 2009, reference 01, and September 28, 2009, reference 03 are AFFIRMED. The appeals in these cases are not timely and the decisions remain in force and effect.

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² Iowa Code section 96.6-2.

³ *Franklin v. Iowa Department of Job Service*, 277 N.W.2d 877, 881 (Iowa 1979).

⁴ *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373, 377 (Iowa 1979), *Hendren v. Iowa Employment Security Council*, 217 N.W.2d 255 (Iowa 1974).