

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

Appeal Number: 15IWDUI002

OC: 07/08/12

Claimant: Appellant (3)

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.**

**WALDO S. FIERROS SANTA CRUZ
PO BOX 725
STATE CENTER, IA 50247**

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.

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
3420 UNIVERSITY AVE., STE G
WATERLOO, IA 50701**

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.

JENNY LARA, 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.

JONI BENSON, IWD

(Administrative Law Judge)

February 12, 2015

(Decision Dated & Mailed)

Iowa Code § 96.3(7) – Recovery of Overpayment Benefits
Iowa Code § 96.6(2) – Whether Claimant Filed a Timely Appeal
Iowa Code § 96.16(4) – Misrepresentation

STATEMENT OF THE CASE

By decision dated November 19, 2014 (reference 02), the Iowa Workforce Development (“IWD”) informed the Claimant, Waldo Fierros Santa Cruz (Mr. Fierros Santa Cruz) that IWD determined that he was overpaid \$848 for the two weeks between April 6, 2014 and April 19, 2014. Mr. Fierros Santa Cruz filed an appeal December 22, 2014.

The case was transmitted from IWD to the Department of Inspections and Appeals on December 31, 2014 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties setting a hearing date of February 9, 2014. Mr. Fierros Santa Cruz appeared and testified. The Claimant speaks Spanish; he does not read or speak

English. He appeared with his son, Adrian Fierros, who was willing to interpret these proceedings, and who took the oath of interpreter. This arrangement was agreed to by the Claimant and by Jenny Lara, who appeared for IWD. Administrative notice was taken of documents in the files, which are referred to more specifically herein.

The Claimant acknowledged having received exhibits A-1 – A-4, B-1 – B-3, and C-1 – C3 from IWD. Ms. Lara acknowledged having received a hand-written three-page letter written by Adrian Fierros on behalf of his father, which is part of the record herein.

ISSUES

Three issues were asserted by IWD on appeal: 1) whether the Claimant submitted a timely appeal from the November 19, 2014 decision; 2) whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and if so, whether the amount of overpayment was correctly calculated; and 3) whether IWD correctly determined the overpayment was a result of misrepresentation.

FINDINGS OF FACT

On December 28, 2014 IWD mailed a preliminary audit notice to Mr. Fierros Santa Cruz, who had been receiving unemployment benefits pursuant to a claim he filed on December 15, 2013. The audit notice informed Mr. Fierros Santa Cruz of a potential overpayment of unemployment benefits in the amount of \$848 because the Claimant failed to report wages paid to him for work performed at for Con-Struct, Inc. for two specific weeks during the period April 6, 2014 through April 19, 2014. Mr. Fierros Santa Cruz called November 12 in response to the audit notice and had to leave a voice message. When Ms. Lara tried to return his call, she discovered that the Claimant's voicemail box had not been set up. She did not attempt to call him again, but waited to see if he would call back. When he did not, she had the IWD system generate the decision of November 19, 2014 to Mr. Fierros Santa Cruz. The Claimant stated at this hearing that he does not dispute the overpayment of \$848. He did not address the issue of misrepresentation, so it is *not* assumed that he admits that the overpayment occurred as the result of misrepresentation.

The decision of November 19 included this statement: "This decision becomes final unless an appeal is postmarked by 11/19/14, or received by Iowa Workforce Development Appeal Section by that date." The decision was not sent to the Claimant in Spanish. He personally showed up at the IWD office in Marshalltown and filed an appeal there on December 22, 2014.

Mr. Fierros Santa Cruz's appeal states (as translated), "I don't agree with the overpayment of \$1213 from Con-Struct, Inc because they fired me!" Despite this statement, the issue was certified to this administrative tribunal as explained in the "Statement of the Case." The only documents provided to this administrative law judge were documents related to the claimed \$848 overpayment for the two weeks in April. The true nature of the Claimant's appeal became apparent from his testimony here and from a note written by Ms. Lara on exhibit B-2 that an IWD administrative law judge had issued a decision on July 30, 2014 adverse to Mr. Fierros Santa Cruz regarding an

overpayment for three weeks in June, 2014.

It was explained to Mr. Fierros Santa Cruz that the undersigned has no jurisdiction over any dispute he has regarding the \$1213 overpayment that ALJ Donner ordered on July 30, 2014. The administrative file available to the undersigned does not include any information as to whether Mr. Fierros Santa Cruz appealed that decision. It is noted that he clearly intended to appeal it, but the timeliness of that appeal is not before the undersigned. Mr. Fierros Santa Cruz was urged to take a copy of this decision to his local IWD office for further information about the matter he truly intended to appeal.

In the meanwhile, the three issues certified for this appeal are addressed below.

REASONING AND CONCLUSIONS OF LAW

Timeliness

It must first be determined whether Mr. Fierros Santa Cruz filed a timely appeal from the November 19, 2014 decision of IWD. Iowa Code § 96.6(2) requires that an appeal of an IWD 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." Here, it cannot be said that the Claimant was given notification of the IWD decision because it was not provided to him in a language that he could read. His appeal is deemed timely.

Overpayment and Computation Thereof

As stated earlier, Mr. Fierros Santa Cruz acknowledged that he was overpaid for the two weeks in April the total amount of \$848. This issue is resolved in IWD's favor.

Misrepresentation

The Department is authorized to impose an administrative penalty when it determines that an individual has willfully and knowingly made a false statement or misrepresentation or willfully and knowingly failed to disclose a material fact with the intent to obtain unemployment benefits to which the individual is not entitled.¹

Upon questioning by Ms. Lara, the Claimant acknowledged that his failure to report income from Con-Struct, Inc. was due to the lag in time between earning the wages and actually being paid for them. As a non-English speaker, it appears that the Claimant was sufficiently confused to not support the claim that his overpayment was the result of deliberate misrepresentation.

DECISION

For the foregoing reasons, IWD's decision dated November 19, 2013 is **MODIFIED** in favor of the Claimant to reflect an overpayment of \$848, but removing the 15% penalty

¹ Iowa Code § 96.5(8) (2013).

for alleged misrepresentation. IWD shall take any action necessary to implement this decision.

cjg