

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

**Appeal Number:** 11IWDUI199-201  
**OC:** 10/07/07  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**PAUL A. MELLON**  
**179 REBECA LANE**  
**WATERLOO, IA 50707-2635**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

JOE WALSH, 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.

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(Administrative Law Judge)

October 26, 2011

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(Dated and Mailed)

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Iowa Code section 96.2(2) – Timely Appeal  
Iowa Code section 96.5(2) – Voluntary Quitting  
Iowa Code section 96.3(7) – Overpayment of Benefits  
Iowa Code section 96.16(4) – Misrepresentation

**STATEMENT OF THE CASE**

Paul Mellon filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated August 11, 2009, reference 02. In this decision, IWD determined that Mr. Mellon was overpaid \$573 in unemployment insurance benefits for the period between November 23, 2008, and December 6, 2008. The decision stated that the overpayment resulted from the claimant failing to report wages earned from Ja-Hu Transportation.

IWD also issued two other decisions regarding Mr. Mellon. On August 6, 2009, reference 01, a decision found him ineligible for unemployment benefits because he voluntarily quit work. On August 11, 2009, reference 03 decision found an overpayment of \$6,121.01 for a 19 week period between December 7, 2008, and June 19, 2009, due to the voluntary quitting found in reference 01. Mr. Mellon's notice of appeal specified an appeal only of the decision reference 02.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 18, 2011, for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on August 22, 2011, setting a hearing on September 8, 2011. The appellant moved to continue, and on September 9, 2011, new notices issued setting a hearing on October 26, 2011. On that date the appeal proceeded to hearing before Administrative Law Judge Robert H. Wheeler. Investigator Karen Von Behren represented IWD and testified. The appellant appeared pro se and testified. Exhibits 1 through 14, submitted by IWD entered the record without objection.

### **ISSUES**

Whether the claimant filed a timely appeal.

Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits.

Whether IWD correctly determined that the claimant was ineligible for benefits because he voluntarily quit work.

### **FINDINGS OF FACT**

The appellant worked as a truck driver for Ja-Hu Transportation, LLC. The appellant applied for and received unemployment insurance benefits during this time

IWD issued the decision under appeal and the other two decisions on August 6 and 11, 2009. The appellant testified that he was aware of the decisions in September of 2009. Ms. Von Behren testified that the decisions were mailed to Mr. Mellon's address of record, which is still his address, and he began paying back the overpayment in September of 2009. Mr. Mellon stated that he did not pursue the matter until recently because that IWD was probably correct in their determinations. However, after seeking legal advice, he tried to appeal to find out if IWD was correct, and if he did have to repay the overpayment. (Mellon, Von Behren testimony).

The appellant's Notice of Appeal in this case is dated August 2, 2011.

### **REASONING AND CONCLUSIONS OF LAW**

A. Timely Appeal

Iowa Code section 96.6 (2) provides (in pertinent part),

“...Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant’s last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

The appeal in this matter followed the decision being appealed by almost two years. The decision dated August 11, 2009, reference 02 became final by operation of the statute on August 21, 2009. The appellant admitted notice of the decision and stated that he did not pursue it until recently. This appeal was not timely, and that defect is jurisdictional. There is no ability to address the merits of the appeal further.

### **DECISION**

Iowa Workforce Development’s decision dated August 11, 2009, reference 02, is **AFFIRMED**.

rhw