

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JESUS LOPEZ
1316 BUCHANAN STREET
DES MOINES IA 50316-3458

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

Teresa K. Hillary, IWD

Appeal Number: 13IWDUI072-074
OC: 01/08/12
Claimant: Appellant (2)

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)

September 24, 2013

(Decision Dated & Mailed)

STATEMENT OF THE CASE

The claimant, Jesus Lopez, filed an appeal of a representative's decision dated February 4, 2013, reference 03. A Notice of Telephone Hearing was mailed to all parties on July 25, 2013 setting a hearing date of August 26, 2013 at 8:00 AM. On that date a telephone appeal hearing was held before Administrative Law Judge John M. Priester. Investigator Irma Lewis represented the Department and presented testimony. Mr. Lopez appeared and presented testimony. The administrative file was submitted by the Department and admitted into the record as evidence.

ISSUES

1. Whether there was an overpayment of unemployment benefits;
2. Whether the overpayment was a result of misrepresentation;

3. Whether the claimant is ineligible to receive unemployment insurance benefits;
4. Whether the claimant failed to establish justifiable good cause for failing to report to a meeting with the investigator at the Des Moines local office;
5. Whether the case was properly remanded based upon a full review of the file.

PROCEDURAL HISTORY

Mr. Lopez appealed decisions made by the Department dated January 2, 2013. The Department of Inspections and Appeals, Division of Administrative Hearings, issued a Notice of Hearing on February 5, 2013 setting the matter for an In-Person Hearing before Judge Lockard. The hearing was set for March 28, 2013. Investigator Irma Lewis appeared and Mr. Lopez did not appear. These were for cases 13IWDUI061-062.

On February 4, 2013 the Department issued three more decisions concerning Mr. Lopez's unemployment benefits. Mr. Lopez filed a timely appeal and the matter was transmitted to the Department of Inspections and Appeals, Division of Administrative Hearings. These were for cases 13IWDUI072, 13IWDUI073, and 13IWDUI074.

On February 13, 2013 a Notice of Hearing was issued setting the hearing for April 1, 2013 by telephone conference call. Mr. Lopez participated in the hearing but no one from the Department participated.

The Department of Inspections and Appeals, Division of Administrative Hearings' records show that Ms. Lewis was emailed a copy of the Notice of Hearing on Wednesday, February 13, 2013 at 10:11 AM. Joni Benson with IWD was also sent a copy of this Notice of Hearing in the same email.

After the April 1, 2013 hearing the undersigned issued a decision reversing the Department based upon its failure to participate in the hearing.

On April 15, 2013 Ms. Lewis filed the following appeal with the Employment Appeal Board:

Please read carefully the decision rendered on April 12, 2013; it indicates that the department did not participate in a telephone hearing.

Please also read the Notice of In-Person Hearing.

This investigator, and a witness, Carmen Gomez, liaison to the Director's Office, appeared in person on March 28, 2013, at 1:00 as scheduled and did meet with Judge Lockard. Claimant Lopez did not appear.

Please accept this as our request to appeal. This is unacceptable that a decision would be rendered that we did not appear on the phone on April 1, 2013, when we were scheduled to appear in person on March 28, 2013, which we did.

On April 16, 2013 Judge Lockard issued a decision upholding the Department's decision

in case number 13IWDUI061 and 13IWDUI062.

A memo in the administrative record is signed by a professional from the Employment Appeal Board and dated April 17/18, 2013 (the date is written over and it is not clear whether it was dated the 17th or 18th). This memo provides:

Spoke to Meggan Van Gundy regarding these five cases. The claimant appealed 3 cases to begin with and IWD sent the appeal and files over to Administrative hearings and the case was assigned to Judge Lockard and a notice of hearing was sent to the parties and the claimant did not show. The ALJ has not issued a decision on this yet.

2 weeks after Administrative hearings received the appeal and the 3 cases were assigned to Judge Lockard, IWD sent over 2 more files with an appeal from the claimant and this was assigned to Judge Priester. Notices of hearing were sent out to the parties and the claimant participated, however, IWD did not participate.

Irma Lewis spoke to Administrative hearings and told them that she thought they were all the same and so disregarded the second set of notice of hearing and that's why she did not appear.

So, there is still a decision to be made on the first cases that were assigned to Judge Lockard.

(emphasis supplied).

On May 7, 2013, Ms. Lewis provided the following letter to the Employment Appeal Board:

I am enclosing copies of the appeal letter I submitted dated April 15, 2013, along with the attachments. In visiting with one of your staff, they indicated that my appeal letter was not clear.

I was NEVER notified of a hearing for IWDUI-072 through IWDUI-074. I WAS notified of a hearing for IWDUI-061 and 062, which I have included as a document.

The representative from your department indicated that when I submitted the notice of hearing of 061-062 I did not make it clear that this was the reason for my appeal of 072 – 074. I apologize for my error in not making this clear.

So to try to make is succinct, I did NOT receive notice of hearing for IWDUI-072 through 074; but DID receive and participate in notice of hearing for IWDUI-061 to 062, along with a witness, and we did appear in person as indicated in the notice of hearing.

On June 10, 2013 the Employment Appeal Board (EAB) issued a decision in this case remanding the matter back to an administrative law judge to hold a hearing. The EAB's Findings of Fact provide:

The notice of hearing in this matter was mailed February 13, 2013. The notice set a hearing for April 1, 2013. The Department did not appear for or participate in the hearing. The reason the Department did not appear is because the Department did not receive and did not know the hearing was taking place.

In the Reasoning and Conclusions of Law the EAB states:

Here the Department did not participate in the hearing through no fault of the Department. The Department did not receive the Notice of Hearing in order to participate. For this reason, the matter will be remanded for another hearing before an administrative law judge.

The matter was heard again on August 26, 2013 and both Mr. Lopez and Ms. Lewis participated in the hearing. Administrative Law Judge John M. Priester presided over the telephonic hearing.

FINDINGS REGARDING VALIDITY OF REMAND

The undersigned did not read the complete remand file before the administrative hearing. Thus, the memorandum from the EAB was not known when Ms. Lewis testified. The undersigned was not able to ask Ms. Lewis about the inconsistencies in her appeal statements to the EAB and the memo drafted by an EAB employee.

The undersigned finds that Ms. Lewis did receive notice of the first hearing. The Department of Inspections and Appeals, Division of Administrative Hearings, sends IWD its Notice of Hearings via email. The Notice of Hearing was emailed to Ms. Lewis on Wednesday, February 13, 2013 at 10:11 AM. Ms. Lewis told an EAB employee that she received the Notice of Hearing, but mistakenly believed that it applied to cases 13IWDUI061-062.

Ms. Lewis did receive notice and she "disregarded the second set of notice of hearing and that's why she did not appear."

This matter should not have been remanded. Ms. Lewis did not establish good cause for not participating. Her statements to EAB appear to be misrepresentations. She did receive notice, she just disregarded the notices. This should not allow for a remand. The original decision should be affirmed.

However, if the EAB believes that good cause did exist and the matter was properly remanded, the undersigned shall address the merits of the appeal.

FINDINGS OF FACT

Ms. Lewis testified that Mr. Lopez's wife called the Department. Ms. Lopez had questions about her husband's unemployment benefits. Ms. Lewis indicated that she could not speak with Ms. Lopez without Mr. Lopez's permission. Ms. Lopez indicated that her husband was out of the country. Ms. Lopez was eventually able to conference in Mr. Lopez and then Ms. Lewis indicated that Ms. Lopez would need a "white sheet."

An in-person hearing was scheduled for Mr. Lopez for March 28, 2013 to discuss his availability. Mr. Lopez did not appear for the hearing and Judge Lockard issued a decision finding that he was not in the country and therefore not available for employment.

Mr. Lopez testified in the hearing that he goes to Mexico to visit family. Before he leaves he speaks to his employer. His employer gives him three days to get back to work if he is given notice that he is needed at work. He believes that this was just a miscommunication between his wife, himself and the Department. He has always been ready and available for employment.

The Department determined that Mr. Lopez was overpaid \$411 for the week of January 20, 2013 to January 26, 2013. The Department determined that this overpayment was the result of misrepresentation.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD can recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD 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.¹

Here, the alleged overpayment stems from IWD's determination that Mr. Lopez was not eligible for benefits from January 20th to January 26th 2013 because he was not available for work owing to being out of the state of Iowa. In order to receive unemployment insurance benefits, an individual must be able to work, available for work, and be earnestly and actively seeking work.²

IWD's determination that Mr. Lopez was out of the state during the one-week period from January 20th to January 26, 2013 and therefore not available for work was correct. Mr. Lopez was out of the country and therefore unavailable for work. His wife made incorrect statements to the Department that constitute misrepresentation.

Because Mr. Lopez was not able and available for work, he was overpaid unemployment benefits. The Department's determination that Mr. Lopez was overpaid because of misrepresentation must be upheld if the EAB wishes to reach the merits of this appeal.

¹ Iowa Code § 96.3(7)(a) (2009).

² Iowa Code § 96.4(3) (2009).

DECISION

The original decision issued on April 12, 2013 is AFFIRMED. This case should not have been remanded. Iowa Workforce Development's decisions dated February 4, 2013 is REVERSED.

If the EAB wishes to address the merits of the appeal, then the evidence does show that the February 4, 2013 decision was correct and should be AFFIRMED.

jmp