

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

**Appeal Number:** 11IWDUI207  
**OC:** 02/14/10, 2/13/11  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**PAMELA OSHEL**  
**434 N. PORTER**  
**SLATER, MO 65349**

**IOWA WORKFORCE DEVELOPMENT**  
**ATTN. KAREN VON BEHREN**  
**INVESTIGATIONS AND RECOVERY**  
**1000 N. ROOSEVELT AVENUE**  
**BURLINGTON, IA 50601**

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)

September 29, 2011

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(Dated and Mailed)

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Iowa Code section 96.6-2 – Timeliness of Appeal  
Iowa Code section 96.3-7 – Recovery of Overpayment Benefits  
Iowa Code section 96.4-3 – Eligibility for Benefits  
Iowa Code section 96.5-8 – Administrative Penalty

**STATEMENT OF THE CASE**

Appellant/Claimant Pamela Oshel filed an appeal from two decisions issued by Iowa Workforce Development (“IWD”) dated May 10, 2011, reference 01, and May 23, 2011, reference 05. In the decision dated May 23, 2011, reference 05, IWD found Oshel had

received a net overpayment of \$929.03 between May 9, 2010 and September 18, 2010 because she incorrectly or failed to report earnings from Care Initiatives. In the decision dated May 10, 2011, reference 01, IWD imposed an administrative penalty from May 8, 2011 through June 11, 2011 and found Oshel was not eligible to receive unemployment insurance benefits because she made false statements concerning her employment and earnings and did so to receive unemployment insurance benefits from May 9, 2010 through August 21, 2010.

IWD transmitted the administrative file to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the administrative file, it mailed a copy of the administrative file to Oshel.

On September 21, 2011, a telephone hearing was held before Administrative Law Judge Heather L. Palmer. Oshel appeared. Karen von Behren appeared on behalf of IWD. At the start of the hearing von Behren reported she believed Oshel also intended to appeal the decision dated May 23, 2011, reference 05, involving the alleged overpayment. Oshel affirmed she intended to appeal that decision. von Behren also raised the issue of whether Oshel filed a timely appeal of the decisions. Oshel denied receiving a copy of IWD's exhibits. Exhibits 1 through 12 were marked. The hearing was continued to September 28, 2011. von Behren mailed a second set of IWD's exhibits to Oshel.

On September 28, 2011 Oshel appeared and testified. von Behren appeared and testified on behalf of IWD. Oshel acknowledged receiving Exhibits 1 through 12. Exhibits 1 through 12 were admitted into the record.

### **ISSUES**

Whether the Claimant filed a timely appeal.

Whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.

Whether IWD correctly determined the Claimant is ineligible to receive unemployment insurance benefits.

Whether the Department correctly imposed an administrative penalty on the basis of false statements made by the Claimant.

### **FINDINGS OF FACT**

IWD received information that Oshel received earnings while she was receiving unemployment insurance benefits. IWD contacted Oshel's employer, John Shaffer, also known as Care Initiatives, located in Warrensburg, Missouri, and requested Oshel's wage information. Care Initiatives supplied the requested information. von Behren reviewed the wage information received from Oshel's employer.

von Behren determined Oshel had received overpayments and underpayments from May 8, 2010 through October 23, 2010. von Behren sent Oshel a letter on April 26,

2011, informing her that she believed Oshel had received a net overpayment of \$929.03 for the period between May 2, 2010 and September 18, 2010 because Oshel had failed to correctly report her wages earned with Care Initiatives. von Behren stated that because Oshel gave false information on the claims made from May 2, 2010 through September 18, 2010, IWD would make a determination of whether an administrative penalty should be assessed. von Behren explained that an administrative penalty is a disqualification from receiving benefits for a specific period of time because false information was given on prior claims for benefits. von Behren requested Oshel provide a response to her by mail or facsimile concerning the issue by May 9, 2011.

von Behren received a call from Oshel. Oshel explained that she had contacted Kelly Roach from IWD and told Roach that she had incorrectly reported her earnings. Oshel stated something was wrong because she told Roach she had incorrectly reported her earnings from May 2010 forward. von Behren asked Oshel to prepare a written statement and to send it to her. Oshel prepared a letter stating that in August 2010 she contacted IWD's Creston office and reported she unknowingly hit the wrong button on the telephone and that she was sorry for the mistake. Oshel explained that she has a comprehension problem. Oshel sent the letter by facsimile to von Behren on May 9, 2011.

von Behren contacted the Creston office and spoke with Kelly Roach. Kelly Roach stated Oshel came into her office on September 27, 2010 and stated she incorrectly reported her wages for the weeks ending August 21, 2010 through September 18, 2010. Oshel originally reported she received no wages during these weeks. Oshel informed Roach she receives wages of \$41 for the week ending August 21, 2010, \$144 for the week ending August 28, 2010, \$144 for the week ending September 4, 2010, \$83 for the week ending September 4, 2011, and \$144 for the week ending September 18, 2010. Roach entered the new information into the IWD computer system. von Behren inquired whether Oshel had reported her earnings from May 2010 forward. Roach stated she recalled Oshel reporting the wages from August 21, 2010 through September 18, 2010 only.

On May 10, 2011, von Behren determined Oshel had incorrectly reported her earnings and that an administrative penalty should be imposed. On May 23, 2011, IWD issued a decision, reference 05, finding Oshel had received an overpayment of \$1,010.03 between May 9, 2010 and September 18, 2010 because she incorrectly or failed to report earnings from Care Initiatives, and that she was also underpaid, for a net overpayment of \$929.03. The decision stated "[t]his decision becomes final unless an appeal is postmarked by June 2, 2011, or received by the Iowa Workforce Development Appeal Section by that date." (Exhibit 12).

On May 10, 2011, IWD issued a decision, reference 01, finding Oshel was not eligible to receive unemployment insurance benefits and imposing an administrative penalty from May 8, 2011 through June 11, 2011 because she made false statements concerning her employment and earnings and did so to receive unemployment insurance benefits from May 9, 2010 through August 21, 2010. The decision stated "[t]his decision becomes final unless an appeal is postmarked by May 20, 2011, or received by the Iowa Workforce Development Appeal Section by that date." (Exhibit 10).

Oshel sent an appeal of references 3, 4, 5, and 1 to IWD by facsimile on August 3, 2011. In her appeal letter Oshel stated she disagreed with IWD's findings.

At hearing Oshel testified her letter dated May 9, 2011 was the appeal of the May 10, 2011, reference 01, and May 23, 2011, reference 05, decisions.

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

Iowa Code section 96.6(2) requires a claimant to file an appeal of a representative's decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.<sup>1</sup>

On May 23, 2011, IWD issued a decision, reference 05, finding Oshel had received a net overpayment of \$929.03 between May 9, 2010 and September 18, 2010 because she incorrectly or failed to report earnings from Care Initiatives. The decision stated "[t]his decision becomes final unless an appeal is postmarked by June 2, 2011, or received by the Iowa Workforce Development Appeal Section by that date." (Exhibit 12). Oshel's appeal is dated August 3, 2011. Her appeal was untimely.

On May 10, 2011, IWD issued a decision, reference 01, finding Oshel was not eligible to receive unemployment insurance benefits and imposing an administrative penalty from May 8, 2011 through June 11, 2011 because she made false statements concerning her employment and earnings and did so to receive unemployment insurance benefits from May 9, 2010 through August 21, 2010. The decision stated "[t]his decision becomes final unless an appeal is postmarked by May 20, 2011, or received by the Iowa Workforce Development Appeal Section by that date." (Exhibit 10). Oshel's appeal is dated August 3, 2011. Her appeal was untimely.

At hearing Oshel alleged that her letter dated May 9, 2011 appealed the decisions dated May 10, 2011, reference 01, and May 23, 2011, reference 05. At the time she sent her May 9, 2011 letter, IWD had not yet issued the May 10, 2011 and May 23, 2011 decisions. Oshel's appeals were untimely. Because Oshel failed to timely file her appeals I do not have jurisdiction to consider whether IWD correctly determined Oshel was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated, whether IWD correctly determined Oshel is ineligible to receive unemployment insurance benefits, and whether IWD correctly imposed an administrative penalty on the basis of false statements made by Oshel.

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<sup>1</sup> *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

**DECISION**

Oshel failed timely appeal IWD's decisions dated May 10, 2011, reference 01, and May 23, 2011, reference 05. IWD's decision dated May 23, 2011, reference 05, concluding Oshel received a net overpayment of \$929.03 is affirmed. IWD's decision dated May 10, 2011, reference 01, finding Oshel is ineligible to receive unemployment insurance benefits and imposing an administrative penalty from May 8, 2011 through June 11, 2011 is affirmed.

hlp