

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

Appeal Number: 12IWDUI336
OC: 1/10/10
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

LIANE TANCHINH
118 S. CALHOUN STREET
WEST LIBERTY, IA 52776-1516

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

JOE WALSH, IWD
CARLA DENNIS, IWD
JONATHAN LINNENBRINK, 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)

September 27, 2012

(Dated and Mailed)

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

STATEMENT OF THE CASE

Liane Tanchinh filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated June 23, 2011, reference 04. In this decision, IWD determined that Mr. Tanchinh was overpaid \$2,335 in unemployment insurance benefits for the period between July 18, 2010 and September 11, 2010. The decision stated that the overpayment resulted from the claimant incorrectly reporting wages from I.A.C Iowa

City, LLC. The decision further found that the overpayment was the result of misrepresentation by Mr. Tanchinh.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 16, 2012, for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on August 22, 2012, setting a hearing on September 26, 2012. Notice went to the claimant at his address of record. The claimant provided his address on a new claim for benefits filed in June of 2012. This notice was not returned in the mail. On September 26, 2012, a telephone appeal hearing was held before Administrative Law Judge Robert H. Wheeler. Investigator Jonathan Linnenbrink appeared for IWD and testified. The appellant did not appear and the hearing was held in his absence. Exhibits 1 through 23, 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 an overpayment was the result of misrepresentation on the part of the claimant.

FINDINGS OF FACT

Lian Tanchinh filed a claim for unemployment benefits on January 10, 2010. Mr. Tanchinh made claims for and received unemployment benefits during 2010.

IWD conducted an audit of Mr. Tanchinh's unemployment claim. The audit determined that Mr. Tanchinh's failure to report wages from his employer at a time when he was earning such wages resulted in an overpayment of unemployment benefits in the amount of \$2,335. (Exhibits 3, 4, 5; Linnenbrink testimony).

Mr. Linnenbrink sent Mr. Tanchinh a preliminary audit notice and a notice to respond to the overpayment situation. Mr. Tanchinh did not respond. (Exhibit 3).

On June 23, 2011, IWD issued a decision to Mr. Tanchinh notifying him that he was overpaid by \$2,335, as a result of misrepresentation. (Exhibit 2; Linnenbrink testimony). Mr. Tanchinh dated his appeal of this decision on July 13, 2012, and it was received by IWD on July 17, 2012. (Exhibit 1).

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 over one year. This appeal was not timely, and there is no need to address the merits of the appeal further. The June 23, 2011, decision became final by operation of law on July 3, 2011, ten calendar days after the decision.

DECISION

Iowa Workforce Development’s decision dated June 23, 2011, reference 04, is **AFFIRMED**; the claimant was overpaid unemployment insurance benefits in the amount of \$2,335, as a result of his misrepresentation.

rhw