

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

Appeal Numbers: 13IWDUI481,482, 483
OC: 5/12/13
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MARK HENNICK
3523 MONTICELLO AVENUE
WATERLOO, IA 50701-4618

IOWA WORKFORCE DEVELOPMENT
JUDY GILKINSON, QUALITY CONTROL

JONI BENSON, 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)

November 25, 2013

(Dated and Mailed)

STATEMENT OF THE CASE

Claimant/Appellant Mark Hennick filed an appeal from three separate decision issued by Iowa Workforce Development ("IWD") issued on the following dates: August 22, 2013 (reference 02) September 18, 2013 (reference 04), and September 19, 2013 (reference 05).

On September 30, 2013, IWD received a handwritten appeal request from Hennick. IWD transmitted the case to the Department of Inspections and Appeals, which scheduled a contested case hearing for November 25, 2013.

On November 25, 2013, a contested case hearing was held before Administrative Law Judge David Lindgren. Hennick appeared and testified. Judy Gilkinson appeared and testified on behalf of IWD.

ISSUES

Whether the Claimant filed a timely appeal.

Whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits.

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

Whether the Department correctly determined that the Claimant failed to meet the availability requirements by failing to report to quality control.

FINDINGS OF FACT

As noted, Hennick filed an appeal from three separate decision issued by Iowa Workforce Development (“IWD”) issued on the following dates: August 22, 2013 (reference 02) September 18, 2013 (reference 04), and September 19, 2013 (reference 05). In reference 02, IWD determined that Hennick had failed to appear for an interview with a quality control auditor on July 31, 2013. It therefore denied benefits as of July 28. In reference 04, IWD determined that Hennick had received an overpayment of \$765 for the three weeks between July 28 and August 17, 2013. In reference 05, IWD warned Hennick that he had not completed two verifiable job contacts for the week ending June 22, 2013.

Ms. Gilkinson’s Case Log noted that on July 25, 2013, she mailed a notice of a quality control interview to Hennick, requiring him to attend an interview on July 31, 2013. On the date of the scheduled interview, she called Hennick but received no answer and left him a detailed message asking him to contact her. On August 6, Gilkinson again called Hennick but had to leave another voice mail. She also sent a second notice to complete and return the quality control questionnaire. Gilkinson then called Hennick on both August 20 and 21, but was unable to reach him. She therefore locked his case as of July 28, 2013. IWD later determined that Hennick had been overpaid a total of \$765 in unemployment benefits for the weeks between July 28 and August 17.

Hennick’s letter requesting an appeal was received by IWD on September 30, 2013, but it was postmarked on September 27, 2013.

At the hearing on appeal from these decisions, Hennick testified that did not realize there was an appointment with quality control. He just thought it was a survey. He noted that he has difficulty reading and was on antidepressants at the time, which made his vision blurry. He was “totally oblivious” to anything Ms. Gilkinson had sent him. He may have deleted messages from her thinking they were from a bill collector.

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.¹ In this case, Hennick failed to file an appeal within ten days of the August 22 decision (reference 02) in which the department disqualified him from benefits based on his failure to appear for the interview with the quality control auditor. That decision must therefore be affirmed.

I next address the other two decisions (references 04 and 05). Hennick’s appeal request was timely in that it was postmarked within 10 days of both of these decisions.

As noted, in reference 04, IWD IWD determined that Hennick had received an overpayment of \$765 for the three weeks between July 28 and August 17, 2013. This period of time followed his failure to report for the quality control interview.

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.² IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.³

The record supports IWD’s determination that Hennick received a net total overpayment of \$765. He had failed to report for the required interview and was therefore ineligible until such time as he did complete it.

In reference 05, IWD warned Hennick that he had not completed two verifiable job contacts for the week ending June 22, 2013. This decision was apparently based on Hennick’s contact with Peters Construction. He explained that he “saw a guy in the parking lot. He looked like an employee so I asked if they were hiring. He said no, so I left.” He did not fill out any application with Peters Construction.

¹ *Beardslee v. Iowa Dep’t of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

² Iowa Code § 96.3(7) (2011).

³ *Id.*

In order to be eligible for benefits, a person must be “earnestly and actively seeking work.”⁴ An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. I conclude IWD correctly warned Hennick for not making an earnest and active search for work during this week. Merely asking a person in a parking lot if the company is hiring does not constitute an earnest and active work search.

DECISION

Hennick failed to timely appeal IWD’s decision dated August 22, 2013, finding he had failed to report for a required interview. There is therefore no jurisdiction to hear this appeal. IWD’s decision is therefore **AFFIRMED**.

IWD’s other two decisions here are affirmed on the merits. Based on his failure to appear for the interview he was ineligible for benefits and he cannot be said to have been earnestly and actively seeking work the week of June 22, 2013. These decisions are therefore **AFFIRMED**.

dbl

⁴ 871 Iowa Administrative Code 24.22(3).