

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

Appeal Numbers: 11IWDUI322-323
OC: 01/23/11
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**GEORGE BLOOM
BUILDING 68, THAYER AVE.
JIM HANCOCK BLVD.
DES MOINES, IA 50315**

**INVESTIGATIONS AND RECOVERY, IWD
KAREN VON BEHREN, INVESTIGATOR**

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.

(Administrative Law Judge)

January 30, 2012

(Dated and Mailed)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.4-3 – Eligibility for Benefits
Iowa Code § 96.3-7 – Recovery of Overpayment Benefits
Iowa Code § 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Claimant/Appellant George Bloom appealed from two decisions issued by Iowa Workforce Development (“IWD”), dated October 13, 2011, reference 11, and October 19, 2011, reference 12. In reference 11, IWD found Bloom was not eligible to receive unemployment insurance benefits from July 17, 2011 through August 27, 2011 because IWD’s records indicated Bloom was in absconded status with the state of Iowa legal

system and did not meet the availability requirements of the law. In reference 12, IWD found Bloom was overpaid \$1,458 for the six weeks between July 17, 2011 and August 27, 2011, because of the decision disqualifying him from receiving unemployment insurance benefits because he was not able and available for work, due to misrepresentation. Bloom's appeal is dated October 30, 2011.

IWD transmitted the cases to the Department of Inspections and Appeals on December 22, 2011, to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the appeal files to Bloom. Prior to the hearing IWD representative, Karen von Behren submitted additional documents, a copy of which was sent to Bloom. A contested case hearing was scheduled for January 30, 2012 at 8:00 a.m.

On January 30, 2012, a telephone hearing was held before Administrative Law Judge Heather L. Palmer at 8:00 a.m. Prior to the hearing, Bloom's copy of the Notice of Telephone Hearing was returned as "Return to Send, Attempted – Not Known, Unable to Forward." I contacted von Behren before the hearing and she indicated this is the only known address for Bloom, Fort Des Moines Correctional Facility. Bloom did not provide an updated address to IWD. This is Bloom's appeal. He is responsible for providing an updated address to IWD. I proceeded with the hearing in Bloom's absence. Exhibits 1 through 12 were admitted into the record.

ISSUES

Whether the Claimant filed a timely appeal.

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

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 overpayment was due to misrepresentation.

FINDINGS OF FACT

Bloom received unemployment insurance benefits in July and August 2012. IWD received notice from the Iowa Department of Corrections that Bloom had absconded. An arrest warrant was issued for Bloom on July 14, 2011. IWD assigned the case to von Behren to investigate a possible overpayment.

Bloom was originally sent to the Iowa Medical Classification Center and then later to the Newton Correctional Facility ("NCF"). von Behren sent Bloom a letter at the NCF on September 21, 2011 informing him that IWD learned he was in absconded status beginning July 14, 2011 through August 26, 2011 and in the Polk County Jail from August 26, 2011 through August 30, 2011, until he was transferred to the Department of Corrections system on August 30, 2011. von Behren asked Bloom to respond to IWD's concern regarding his availability for work and a potential fraudulent overpayment by September 30, 2011.

Bloom responded through a letter dated September 26, 2011, requesting a continuance of the audit for seven to ten weeks. He reported he attended all classes and may have absconded, but was still applying for jobs.

von Behren sent Bloom a second letter on October 3, 2011, informing him she had received his letter. von Behren stated that IWD needed to make a determination regarding Bloom's availability for work, and noted that while he looked for work and participated in classes when he was in absconded status, he needed to be legally able to accept employment. von Behren asked Bloom to respond to the absconded issue by October 13, 2011. von Behren did not receive a response from Bloom.

On October 13, 2011, IWD issued a decision, reference 11, finding Bloom was not eligible to receive unemployment insurance benefits from July 17, 2011 through August 27, 2011, because IWD's records indicated he was in absconded status with the state of Iowa legal system, therefore, he did not meet the availability requirements of the law. The decision stated, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 10-23-11, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 7). The decision was sent to Bloom's address at the NCF. von Behren testified she checked the state of Iowa Correctional System ("ICON") and confirmed Bloom was residing at the NCF on the date IWD issued the decision. Bloom dated his appeal letter October 30, 2011. von Behren testified she received Bloom's appeal on November 2, 2011, that the appeal was postmarked October 31, 2011.

IWD issued a second decision on October 19, 2011, reference 12, finding Bloom received an overpayment of \$1,458 for the six weeks between July 17, 2011 and August 27, 2011, because IWD had previously determined he was disqualified from receiving unemployment insurance benefits because he was not able and available for work. IWD further found the overpayment was due to misrepresentation. von Behren testified Bloom timely appealed the second decision, reference 12.

REASONING AND CONCLUSIONS OF LAW

I. Timeliness of Appeal

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

The decision dated October 13, 2011, reference 11, states, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 10-23-11, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 7). von Behren testified Bloom's appeal was postmarked October 31, 2011. Bloom signed the appeal on October 30, 2011. Bloom's appeal was

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

untimely. Therefore, IWD's decision finding ineligible to receive unemployment insurance benefits from July 17, 2011 through August 27, 2011, because he failed to meet the availability requirements must be affirmed.

II. Overpayment

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 acts in good faith and is 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 Bloom failed to timely appeal the decision, reference 11, finding he was ineligible to receive unemployment benefits from July 17, 2011 through August 27, 2011. Bloom continued to receive unemployment insurance benefits of \$243 per week during this period. IWD has proven Bloom received a \$1,458 overpayment.

III. Misrepresentation

IWD determined the overpayment occurred because of misrepresentation. If an individual, by reason of a nondisclosure or misrepresentation receives unemployment benefits, IWD may either deduct the overpayment amount from any future benefits payable to the individual or seek repayment directly from the individual.⁴ von Behren sent Bloom a letter on October 3, 2011, asking him to respond to the absconded issue by October 13, 2011. Bloom did not respond. Bloom received benefits he was not entitled to receive after he absconded from the state of Iowa legal system. IWD has proven the overpayment was due to misrepresentation.

DECISION

Bloom failed to timely appeal the October 13, 2011 decision, reference 11, finding he was ineligible to receive unemployment insurance benefits from July 17, 2011 through August 27, 2011, because he failed to meet the availability requirements. IWD's decision, reference 11, is **AFFIRMED**. The decision dated October 19, 2011, finding Bloom received a \$1,458 overpayment due to misrepresentation is **AFFIRMED**.

hlp

² Iowa Code § 96.3(7) (2011).

³ *Id.*

⁴ *Id.* § 96.16(4).