

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**ALEX WELLS**  
**401 3<sup>RD</sup> STREET #303**  
**DES MOINES, IA 50309**

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATIONS AND RECOVERY  
IRMA LEWIS**  
**430 EAST GRAND AVE.**  
**DES MOINES IA 50309**

JOE WALSH, IWD

**Appeal Number: 13IWDUI275**

**OC: 3/31/13**

**Claimant: Appellant (6)**

**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, 4<sup>TH</sup> 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)

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August 16, 2013

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(Decision Dated & Mailed)

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**STATEMENT OF THE CASE**

Alex Wells filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated May 1, 2013 (reference 02). In this decision, the Department imposed an administrative penalty that disqualified Wells from receiving unemployment insurance benefits from April 28, 2013 through July 20, 2013.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on May 31, 2013 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on June 6, 2013 setting a hearing date of July 22, 2013. On that date, the hearing was convened. Investigator Irma Lewis appeared for the Department. Appellant Alex Wells did not appear. Lewis notified the undersigned administrative law judge that timeliness of the appeal was at issue; however, timeliness of appeal had not been certified when the case was transmitted to

the Department of Inspections and Appeals. Consequently, an order was issued on July 23, 2013 that continued the hearing and notified the Appellant that timeliness of the appeal would be an issue at hearing. On August 15, 2013, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Lewis represented the Department. The Department submitted Exhibits A through I, which were admitted as evidence. The Appellant was provided instructions to participate in the hearing, but did not call in to do so.

### **ISSUES**

1. Whether the Appellant filed a timely appeal.
2. Whether the Department correctly imposed an administrative penalty on the basis of false statements made by the Appellant.

### **FINDINGS OF FACT**

Alex Wells filed a claim for unemployment insurance benefits with an effective date of March 31, 2013. On May 1, 2013, the Department issued a decision imposing an administrative penalty that disqualified Wells from receiving unemployment insurance benefits from April 28, 2013 through July 20, 2013. The decision states that the administrative penalty is being imposed because Wells made false statements concerning his employment and earnings in order to receive unemployment insurance benefits from May 13, 2012 through June 23, 2013. The decision states that it becomes final unless an appeal is postmarked or received by the Department by May 11, 2013. (Exh. C).

On May 23, 2013, Wells filed a Notice of Appeal. In the appeal, Wells states, "I disagree with the decision as I never received any information about being disqualified. . . I didn't find out I was disqualified till [sic] Saturday 5/18 when I called your office and talk [sic] with an operator." (Exh. B).

The May 1, 2013 decision was mailed to Wells at 401 3<sup>rd</sup> St. #303, Des Moines, Iowa 50309. This is the same address that Wells listed on his Notice of Appeal. (Exh. B, C).

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

Iowa Code section 96.6(2) requires that an appeal of a representative's decision must be filed by a claimant or other interested party "after notification or within ten calendar days after notification was mailed to the claimant's last known address." The Department's regulations provide that the effective date of the appeal is established by either the postmark on the appeal or the date stamp.<sup>1</sup> The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.<sup>2</sup>

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<sup>1</sup> 871 Iowa Administrative Code (IAC) 26.4(2).

<sup>2</sup> *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

The evidence demonstrates that the appeal from Wells was received at a local Workforce Development office on May 23, 2013. May 11, 2013, the due date for the appeal, was a Saturday. The appeal deadline, then, would have been extended to the next working day, which was Monday, May 13, 2013. Wells' appeal was not filed until May 23, 2013. While Wells asserted in his written appeal that he never received notice of the disqualification, he did not appear at hearing to provide any additional information about this assertion. There is no information in the record regarding when or how often Wells checks his mail, whether there are other individuals who receive mail at the same address, whether he has had mail delivery problems, or anything else that would shed light on the assertion that he did not receive notice of the disqualification. The decision was mailed to the same address Wells listed in his appeal. Under these circumstances, I cannot find that Wells failed to receive the Department's May 1, 2013 decision. Since the appeal was not filed timely, I do not have jurisdiction to consider whether the Department was correct in imposing an administrative penalty on Wells.

### **DECISION**

The Appellant's appeal is dismissed because it was not timely filed.