

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

Appeal Number: 08-IWDUI-153
OC: 01/27/08
Claimant: Appellant (6)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

TANNER J OVERTON
3411 SW 43RD STREET
DES MOINES IA 50321-1815

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

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

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

November 25, 2008

(Decision Dated & Mailed)

871IAC26.11 – Motion to Dismiss Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated October 31, 2008, reference 03 that he was overpaid benefits \$328 for the week ending May 17, 2008.

A telephone hearing was scheduled for December 1, 2008, pursuant to due notice. Prior to the hearing being held, Investigator Lewis requested this appeal to be dismissed, as the department had taken corrective action.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds that: The department issued a decision the claimant was overpaid benefits \$328, and he filed a timely appeal. The matter was set for a telephone hearing on December 1, 2008.

After receiving the notice for hearing, Investigator Lewis reviewed some additional information that led the department to issuing a new decision in this matter dated November 19, 2008 that eliminated the overpayment. Lewis filed a written motion to dismiss this appeal due to the department taking corrective action to eliminate the overpayment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the department's motion to dismiss this appeal and remand it should be approved.

871 IAC 26.11 provides:

- (1) No technical form for motions is required. Nevertheless, pre-hearing motions must be in writing, state the grounds for relief and state the relief sought.

The administrative law judge has reviewed the records and files herein and concludes that the motion to dismiss this appeal should be approved, and the matter remanded to Unemployment Appeals. The department issued a new decision dated November 19, 2008 that eliminated the overpayment, and there is no further to issue to adjudicate in this matter. The December 1, 2008, telephone hearing is CANCELED.

DECISION:

The decision of Iowa Workforce Development dated October 31, 2008, reference 03 is SET ASIDE, and the department decision dated November 19, 2008, reference 04 that eliminates the overpayment is controlling in this matter. This appeal is dismissed.

rls