

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

**Appeal Number:** 13IWDUI134  
**OC:** 01/29/2012  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**DEAN QUINONES**  
**P.O. Box 4034**  
**San Dimas, CA 91773**

**INVESTIGATIONS AND RECOVERY, IWD**  
**Jane Conner, INVESTIGATOR**

**JONI BENSON, IWD**  
**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.

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(Administrative Law Judge)

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May 30, 2013

(Dated and Mailed)

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits  
Iowa Code § 96.16(4) – Misrepresentation

**STATEMENT OF THE CASE**

On March 13, 2013, Iowa Workforce Development received Claimant Dean Quinones' request to appeal from a decision of the Iowa Workforce Development, Unemployment Insurance Services Division (IWD). (Exhibit 1) The decision, dated January 15, 2013 (reference 02), determined that Quinones received a \$1,693.56 overpayment of unemployment insurance benefits on claims filed for the period from April 8, 2012 through June 30, 2012, because he failed to report wages earned with Martin Transport. (Exhibit 3)

Hearing was held by telephone conference call on May 23, 2013. Appellant/Claimant Quinones and IWD Investigator Jane Conner both appeared and testified at hearing. Documents contained in the administrative file, which I have labeled as exhibits 1 through 8 were identified and included in the hearing record.

### **STATEMENT OF THE ISSUES PRESENTED**

Whether the Claimant filed a timely appeal.

Whether the Department correctly determined the Claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.<sup>1</sup>

### **FINDINGS OF FACT**

Dean Quinones was working for Marten Transport from April 10, 2012 through June 30, 2012. Although his hours were not steady, he worked and earned wages each week during this 12-week period. His earnings for the period varied from as low \$150.00 (for the first partial week) to a high of \$745.00 (for last week in June). (Exhibits 5 & 6)

Quinones also received unemployment insurance benefits each of the 12 weeks from April 10 through June 30, 2012. In December of 2012 IWD conducted an audit investigation of the claims filed by Quinones during this 12-week period. The audit found that each week during the audit period in which Quinones filed an unemployment claim and failed to report wages earned during the week. Quinones was overpaid unemployment benefits totaling \$1,693.56 during the audit period. (Exhibit 5)

IWD sent Quinones notice of the audit findings and gave him an opportunity to respond. Quinones called Investigator Conner on January 8, 2013, after receiving the notice, and explained that he was owed the unemployment benefits because he had to appeal and wait to get unemployment benefits. (Exhibit 7 & Conner testimony) Quinones also spoke with IWD Supervisor David Eklund on January 8, 2013. After talking with Quinones, Eklund sent the following email to Conner: "I just spoke to him. Go ahead and set up the OP. He agrees with the total (\$1693.56?). He will send in \$150 per month after he received the first billing." (Exhibit 8)

On January 15, 2013, IWD issued the overpayment decision, finding that Quinones was overpaid \$1,693.56 in unemployment benefits during the period from April 10, 2012 through June 30, 2012, because he failed to report wages from Marten Transport. The notice of decision told Quinones: "This decision becomes final unless an appeal is postmarked by 01/25/13, or received by Iowa Workforce Development Appeal Section by that date." (Exhibit 3) Quinones did not file his appeal request letter until March 13, 2013. (Exhibit 1)

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<sup>1</sup> The hearing notice incorrectly listed the second issue as: "Whether the Department correctly imposed an administrative penalty on the basis of false statements made by the Claimant." Investigator Conner corrected the issue statement on the record at the beginning of hearing. Quinones confirmed that he intended to appeal from the IWD overpayment claim and that he was prepared to proceed with the hearing on the issue of the validity and amount of the overpayment claim.

At hearing, Quinones claimed that he never said he was unemployed during the audit period and that he did not know how the unemployment claims system worked in Iowa. He had won a prior unemployment appeal and had been waiting for six months for payment on that claim. Because of this, Quinones felt he was entitled to receive the unemployment benefits. (Quinones testimony)

In response to this testimony, Investigator Conner pointed out that the IWD online and telephone systems for filing weekly claims warn claimants against providing false information and require response to the following question: "For the week ending [x] did you work?" Quinones incorrectly answered this question each week for each of the 12 weeks he worked for Marten Transport.

Quinones said he did not immediately appeal the overpayment decision because he called IWD after receiving an initial billing statement for \$397.56 and was told by a representative that he could pay that amount to resolve the overpayment. He believes that IWD should live by that agreement. Conner explained that the overpayment total includes \$397.56 in extension unemployment and \$1,286 in regular unemployment. Although these amounts were entered as different claim items (see, Exhibit 4) all communication with Quinones regarding the audit and the overpayment Notice of Decision, correctly referred to \$1,693.53 as the total amount of the claim (Exhibits 3, 5-8)

### **CONCLUSIONS OF LAW**

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. Iowa Code § 96.3(7) (2013). Iowa Code section 96.6(2) requires a claimant to file an appeal of an IWD 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. *Beardslee v. Iowa Dep't of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

The notification of the administrative overpayment decision at issue here was dated January 15, 2013. The notice stated, in part, "THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 1/25/13, OR RECEIVED BY THE IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE." (Exhibit 3). IWD received Quinones' appeal on March 13, 2013. The appeal was filed almost two months after the decision issued and was untimely. Because the appeal was untimely, I do not have jurisdiction to consider the merits of the appeal.

Although not necessary to resolve the case, I note that Iowa law clearly allows IWD to recover unemployment benefits from individuals who were not entitled to receive the benefits. IWD has clearly shown that Quinones failed to report wages earned each week for 12 weeks beginning with the week ending April 14, 2012. During the process of filing each claim during this period, Quinones lied about his work status and reported that he did not work during the week. This affirmative misrepresentation is not excused by a lack of understanding of the Iowa system. Therefore, even if the appeal had been timely filed, the overpayment would be upheld on the merits.

**DECISION**

Mr. Quinones failed to file a timely appeal from the January 15, 2013 overpayment decision, reference 02. The decision is affirmed.

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