

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

Appeal Numbers: 10-IWDUI-044
10-IWDUI-045
OC: 11-29-09
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MARCOS T. CASTELLANOS
P.O. BOX 1292
SIOUX CITY, IA 51102

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

DAN ANDERSON, 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)

March 23, 2010
(Dated and Mailed)

Iowa Code Section 96.6-2 – Timeliness of Appeal
Iowa Code Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Marcos Castellanos filed an appeal from two decisions issued by Iowa Workforce Development. The first was issued on December 29, 2009, reference 01, holding that Mr. Castellanos was not eligible to receive unemployment benefits because failed to provide proof he was legally authorized to work in the United States. Therefore, the department denied benefits effective December 14, 2009. The second decision was issued by the department on January 6, 2010, reference 3, holding that Mr. Castellanos had been overpaid benefits in the amount of \$448 for

the week ending December 19, 2009. The overpayment was due to the previous decision disqualifying Mr. Arevalo from receiving benefits.

A telephone hearing was originally scheduled for March 1, 2010. It was discovered at that time that an interpreter was needed. The hearing was rescheduled for March 22, 2010 and was held by telephone conference call. Mr. Castellanos appeared and testified on his own behalf. Investigator Mary Piagentini appeared on behalf of Iowa Workforce Development. The documents contained in the administrative record and numbered 1-6 were considered.¹ The parties were assisted by an interpreter, Patricia VerPloeg.

FINDINGS OF FACT:

Marcos Castellanos originally filed a claim for unemployment benefits effective November 29, 2010. He began receiving benefits in the amount of \$448 per week. He received \$448 in benefits for the week ending December 19, 2009.

On December 2, 2009, Iowa Workforce Development Investigator Mary Piagentini sent Mr. Castellanos a notice asking that he provide copies of documents showing he was authorized to work in the United States.² She provided a deadline of December 12, 2009 to supply the documents.

As of December 24, 2009, Ms. Piagentini had not received a response to her request. Therefore, she caused the department to issue a decision on December 28, 2009, reference 01, holding that Mr. Castellanos was ineligible for unemployment benefits. The document also specifically informed Mr. Castellanos that, if not reversed on appeal, the decision could result in an overpayment of benefits which he would be required to repay. Further, the document stated:

TO APPEAL THIS DECISION:
THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED
BY 01/07/10, OR RECEIVED BY IOWA WOWERKFORCE DEVELOPMENT
APPEAL SECTION BY THAT DATE. IF THIS DATE FALLS ON A SATURDAY,
SUNDAY OR LEGAL HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE
NEXT WORKING DAY.

(Capital emphasis in original).

Mr. Castellanos did not file an appeal within ten days of the decision.

Meanwhile, on January 6, 2010, the department issued another decision holding that Mr. Castellanos was overpaid benefits in the amount of \$448 for the week ending December 19, 2009. The department based its decision on the previous determination Mr. Castellanos was ineligible for benefits during the week in question.

On January 15, 2010, Mr. Castellanos filed appeals from both decisions. At hearing, he testified

¹ Another document, numbered 7, was included in the file but was associated with a different, earlier decision of the Department which was not involved in this case. Document number 7 was excluded from the record because it was irrelevant to the issues at hand.

² When Mr. Castellanos applied for benefits, he noted he was not a U.S. citizen. Mr. Castellanos did provide an alien registration number. When that number was supplied by the department to INS, INS requested more information. Based on that request, Ms. Piagentini sent Mr. Castellanos the request that he supply a copy of his permit to work.

he was in Florida at his sister's home from December 2, 2009 for a period of fifteen days. He stated he returned to Iowa on December 18, 2009. Mr. Castellanos stated that he did receive the department's decision regarding his ineligibility for benefits on that date but did not send in proof of his work authorization or even contact Ms. Piagentini because he was passed the date to provide the information. Further, Mr. Castellanos testified that he did not file an appeal from the decision because he was not aware that he might have to repay benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether there has been a timely appeal of the department's decision disqualifying Mr. Castellanos from receiving benefits.

Iowa law provides that, unless a claimant files an appeal within ten calendar days after notification of a decision was mailed to him or her, the department's decision regarding the payment of unemployment benefits shall become final.³

The Iowa Supreme Court has declared the requirement of filing appeals within the time allotted by statute is jurisdictional.⁴ Failure to file a timely appeal deprives the undersigned of authority over the original decision unless there is evidence the claimant was deprived of a reasonable opportunity to file the appeal on a timely basis.⁵

Mr. Castellanos did not file a timely appeal of the department's decision disqualifying him for benefits. He stated he failed to do so because he did not understand the decision might entail a repayment of benefits he had already received. Not until he received the second decision that he was overpaid benefits and that those benefits must be paid back did the disqualification decision become important to him. Mr. Castellanos was not deprived of a reasonable opportunity to file his appeal on a timely basis. Therefore, the department's decision disqualifying him from receiving benefits effective December 14, 2009 must be affirmed.

The second issue is whether Marcos Castellanos was overpaid unemployment insurance benefits in the amount of \$448.

Iowa law provides that the division of job service must recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.⁶

Mr. Castellanos stated at hearing that he had no quarrel with the department's decision that he received \$448 in benefits during the week in question. Because the department's decision disqualifying him from receiving those benefits is being affirmed, the department decision Mr. Castellanos was overpaid benefits in the amount of \$448 must also be affirmed.

DECISION:

The decisions of Iowa Workforce Development dated December 28, 2009, reference 01, and January 6, 2010, reference 03 are AFFIRMED. Marcos Castellanos was disqualified from

³ Iowa Code section 96.6-2.

⁴ *Franklin v. Iowa Department of Job Service*, 277 N.W.2d 877, 881 (Iowa 1979).

⁵ *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373, 377 (Iowa 1979), *Hendren v. Iowa Employment Security Council*, 217 N.W.2d 255 (Iowa 1974).

⁶ Iowa Code section 96.3(7).

receiving benefits effective December 14, 2009 and he has been overpaid benefits in the amount of \$448,

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