

LCM:
 Target
 One FTE retirement will not be filled
 On additional FTE ' position that will not be filled
 (Approx.)
 (Approx.)
 Sub-total LMC:
 Net Diff.
 Indirect Costs:
 Target
 Reduction in State Auditor billed fees
 Now
 Centralize Fiscal Agents
 SFY 2012 under budget - improved SFY2013 carry over
 2 employee resigns and will not be replaced
 Kelly, Eddie, Jon and Kerry all go down I more FTE each
 Sub-total Indirect:
 Net Diff.
 IWD IT:
 Target
 Gary
 Review software licenses determine if we can get better rates - savings TBD
 Eliminating 1 programmer positions due to loss of WIA funds
 (Approx.)
 (Approx.)
 Sub-total IWD IT:
 Net Diff.
 Sub-total Cost Reductions To-date:
 All
 Sub-total net funding (shortfall) / balance after cost reductions:
 Total Cuts

 Net Diff.
 Projected Fund Balances on June 30, 2013 (see comment below)
 Wagner Peyser
 UI Modernization Act
 Total Cuts
 Check
 Penalty and interest
 Net Diff.
 Check
 Interest Balance on UI reserve fund
 DVOP
 WOTC
 Promise Jobs
 Trade Act
 Offender Re-entry
 Alien Labor
 RES/REA/EUA - hoping we earn this amount!
 Sub-total improved funding positions:
 Net (Shortfall) / Available:
 Unattached FTEs / TBD
 Additional Must Do's:
 Resolve 430 East Grand
 Resolve Cedar Rapids
 Use the available \$1,000,000 Trade Act Assistance, appropriately, on field staff timecards; this will lesson the negative balance carry over
 Mike must use, appropriately, the Reed Act \$ 6,128,916 instead of the UI modernization funds wherever possible
 Explore possibility of establishing a fixed amount in total DAS compensation
 Explore possibility of shrinking Iowa City office - potential savings some % of \$978,728
 Comments on SFY June 30, 2013 fund balances:
 Wagner Peyser - This balance will decrease when we move RES/REA/EUC staff to 100% W/P
 UI Modernization Act - our last resort funds to cover UI shortfall
 Penalty and interest - our last resort funds to cover state shortfall
 Interest Balance on UI reserve fund - funds will be depleted by end of year
 DVOP - We will need to reduce the Vets positions by 3- 4 to stay within budget. No more than 14 FTEs
 WOTC - We will have to move one full time position to Wagner Peyser
 Promise Jobs - We need approximately 4 to 5 staff added to the budget or we lose these funds
 Trade Act - This money will start converting to Trade Act Training dollars if we don't start spending it on staffing.
 Offender Re-entry - We could afford to have a 4th person, as approved in the legislation, but for only one fiscal year.
 Alien Labor - It may appear to be small but it means we should have a full time person on Alien Labor Certification.
 RES/REA/EUA - hoping we earn this amount! - not sure that current project amounts will equal this total

 Spread UI Federal Budget Cuts:
 Projected Fed UI Funding Cuts:
 Field Offices
 Workforce Adm Division Pool
 Field Office Total
 IT Services
 IT, ICON Services, CN
 IT Total
 UI
 Administration
 Tax
 Employee Misclassification
 Field Operations
 Quality Control
 Call Center
 Investigation and Recovery
 Overhead
 UI Total
 LMI SA/IA
 LMI (LT, AR)
 LMI Total
 Appeals (Joe W.)
 Inspections and Appeals (DIA)

 Field Office
 Workforce Adm. Pool (& NEG)
 Total Field
 IT Services

IWD State Board

All
State
UI
(A)
(B)

SFY2013
Proposed
Proposed
Calculated
Indirect
Proposed
Cuts
Cuts
Indirect
State
Carry
Net
Salaries &
Cost Rate
Business
Salaries
All Other
Cost Cuts
% To
Fiscal
Auditor
Over
Balance
Benefits
Unit Cuts
& Benefits
Costs
(A) * 11.72%
Total
Agents
Fees
Balance
Cuts
State
Field Offices
Fed
Filed Offices
Fed
UI
Fed
Appeals
Fed
LMC
Sub-Total Fed
All other
Approx. FTE Equivalent
Total
State
UI
All Other
Indirect Cuts:
Total
Share
Share
Share
Fiscal Agents
State Auditor
Carry forward
Total

Already
Additional
Total
Approx.
Approx.
Approx.
Already
Additional
Total
Approx.
Approx.
Approx.
Cut
Cuts
Cuts
State
Fed
Other %
Total
Cut
Cuts
Cuts
State
Fed
Other %
Total
UI
UI
Field offices
Field offices
IT
IT
IWD Appeals
IWD Appeals
LCM / Jude
LCM / Jude
Indirect:
Indirect:
Director
Director
Kelly
*
Kelly
*
Jon
Jon
Eddie
Eddie
Kerry K
Kerry K
Other comments:
Other comments:
DVOP
DVOP
(need to reduce by 3 or 4 FTEs to no more than 14 total)
(need to reduce by 3 or 4 FTEs to no more than 14 total)
WOTC
WOTC
(need to move 1 FTE to Wagner Peyser)
(need to move 1 FTE to Wagner Peyser)
*
Need to add 4 or 5 FTEs for Promise Jobs or lose funds
Need to add 4 or 5 FTEs for Promise Jobs or lose funds
*
need to add 1 FTE for Alien Labor Cert.
need to add 1 FTE for Alien Labor Cert.
*
could afford one more FTE for offender re-entry - but only for one fiscal year.
could afford one more FTE for offender re-entry - but only for one fiscal year.
*
Kelly absorbed the Fiscal agent responsibilities without adding any FTEs,
Kelly absorbed the Fiscal agent responsibilities without adding any FTEs,
thus essentially reducing indirect costs by more than 1 FTE
thus essentially reducing indirect costs by more than 1 FTE

Message: Budget update

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:31:37 PM
 Item ID: 40860782
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

Budget update

From Mikkelsen, Paul [IWD] **Date** Friday, May 25, 2012 10:43 AM
To Wahlert, Teresa [IWD]
Cc Taylor, Kelly [IWD]

[Shortfall analysis v4.xlsx](#) (45 Kb HTML) [Summary Budget Plan.xlsx](#) (25 Kb HTML)

Teresa attached are two reports. The first one is the spreadsheet that I have been using to calculate the shortfalls by area and projected cost cuts, etc.

The other one is a budget plan / budget summary that takes the information in the first one and summarizes it.

Based on this analysis I believe, if each area makes the identified staff and non-staff cost cuts, we can make the targeted budget for UI, field operations, Appeal (IWD & DIA), LMI and indirect cost pool without dipping into reserves. We will have to also make adjustment along the way to handle variances that will occur.

IT and DAS, however, present some problems. I am currently projecting IT – based on their share of the Federal shortfall and taking into consideration their cost cuts to-date, to be in a deficit status by \$245,600. To resolve this I would project the need to reduce FTEs by 2.5 +1.0 (for timeline) = 3.5 FTEs. I don't think we were intending to cut IT FTEs, so we would have to use reserve funds or make cuts in other areas.

DAS cost increases is the other item for which off-setting cuts have not yet been included. I have identified them as 'unattached' cuts currently, meaning I don't know where the cuts would occur. I am using the IT chargeback rates below to approximate the distribution partner on where cuts would occur. Further, I don't know yet if we can negotiate the projected increase down or if we would choose to use reserve funds rather than make additional cuts.

Distribution of DAS Costs:	IT		FTE
	Chargeback Rate	Spread Cost Incr.	Equivalents
UI	48.0%	(443,208)	(5.2)
State Field	15.0%	(138,503)	(1.6)
Wagner Peyser	7.0%	(64,635)	(0.8)
PJ	8.0%	(73,868)	(0.9)
LMI	2.7%	(24,930)	(0.3)
Workers Comp	4.0%	(36,934)	(0.4)
Labor	4.2%	(38,781)	(0.5)
Vets	1.6%	(14,774)	(0.2)
Indirect Cost Pool	4.7%	(43,397)	(0.5)
Misc. Other Programs	4.8%	(44,321)	(0.5)
Total	100.0%	(923,350)	(10.86)
Total - less Workers Comp and Labor		(847,635)	(9.97)

This is a recap of the projected additional FTEs cuts:

Projected Remaining FTE cuts:

	State	Federal	Timeline /	
			Deficient	Total
Unemployment:	0.0	11.0	0.0	11.0
Field Operations:	3.6	12.0	2.6	18.2
Appeals: IWD / DIA	0.0	1.0	0.4	1.4
LCM:	0.0	0.0	0.6	0.6
IT:	0.0	2.5	1.0	3.5
Unattached - related to DAS cost increases:	2.0	8.0	3.0	13.0
Subtotal	5.6	34.5	7.6	47.7
Indirect Cost Pool			1.5	1.5
Total Projected Remaining FTE Reductions	5.6	34.5	9.1	49.2

Federal
 State
 Total
 Revenue Cuts:
 Cuts
 Cuts
 Cuts
 Projected UI base grant reduction
 State budget field ops- positive balance but will decline as we move the RES?REA?EUC staff to 199 % Wagner Peyser
 Total Short Fall:
 FTEs
 Budget Cuts to-date:
 Federal
 State
 Total
 Reductions:
 Department
 Department
 Cost
 Cost
 Cost
 Completed
 Started
 Target
 Target
 Mike W
 UI
 Savings
 Savings
 Savings
 Yes / No
 Yes / No
 State
 Fed
 Staff:
 Target
 TAX
 QC
 (Approx.)
 (Approx.)
 UI Field
 Other:
 Reduce Wells Fargo
 Charge F. Pearce, Borgeson, Prettyman to Card (included in most recent budget updates).
 WDCA (included in the most recent budget updates)
 Budget Reduction meetings:
 In transferring positions backfill/more Associate positions
 TBD
 Reduced overhead - by centralizing at 150 Des Moines St.
 TBD
 Cuts already made
 Net Diff.
 Cuts still be made
 Total cost cuts
 Lori A
 Field Operations:
 Target
 Iowa City -projected rent expense reduction (est.)
 430 E. Grand -projected savings (est.) (included in the most recent budget updates).
 (Approx.)
 (Approx.)
 Projected rent savings form other 17 field office sites (est.)
 Projected other TBD savings - verified
 Projected FTE reductions - Federal
 Projected FTE reductions - State
 UI move out to 150 Des Moines St. - cost increase to field
 Cuts already made
 Net Diff.
 Cuts still be made
 Total cost cuts
 UI Appeals:
 Joe W
 IWD:
 Target
 Target
 Cut two ALJs - one reduction included in most recent budget updates and one not yet completed
 This one included (included in most budget update).
 Reduce overtime (included in most recent budget update).
 (Approx.)
 (Approx.)
 Offices supplies (included in most recent budget update).
 Cuts already made
 Cuts still be made
 Total cost cuts
 DIA:
 Target
 Target
 DIA has committed to reducing their billings to IWD by \$138,500; if they do not provide a plan to do so by 6/30/12 IWD will reduce their mon
 (Approx.)

Sub-total UI Appeals:
 Net Diff.
 Jude I
 LCM:
 Target
 One FTE retirement will not be filled
 (Approx.)
 Sub-total LMC:
 Net Diff.
 Gary
 IWD IT:
 Target
 1 FTE absorbed after lost of grant funding position
 Cost savings to-date - based on budget update 5/24
 (Approx.)
 (Approx.)
 Cuts already made
 Net Diff.
 Cuts still be made
 Total cost cuts
 DAS Projected Increased Costs:
 Projected increase in utilities costs
 Projected increase in FFS costs
 Total
 Projected State FTE cuts to offset DAS cost increase/unattached
 Projected Fed FTE cuts to offset DAS cost increase/unattached
 IT
 Chargeback
 Spread
 FTE
 Distribution of DAS Costs:
 Rate
 Cost Incr.
 Equivalentents
 UI
 State Field
 Wagner Peyser
 PJ
 LMI
 Workers Comp
 Labor
 Vets
 Indirect Cost Pool
 Misc. Other Programs
 Total
 Total - less Workers Comp and Labor
 Approximately 70% to 75% of the DAS increase is related to IT utility rate increase; so I am using the IT chargeback distribution rates to s
 costs. I am assuming the non-IT chargeback increase would not be materially different in a distribution partner.
 Indirect Costs:
 Target
 Reduction in State Auditor billed fees
 Now
 Centralize Fiscal Agents
 SFY 2012 under budget - improved SFY2013 carry over
 2 employee resigns and will not be replaced
 Kelly, Eddie, Jon and Kerry all go down I more FTE each
 Sub-total Indirect:
 Net Diff.
 Indirect Costs: 2013 Proejected Funding and Costs
 Indirect Rate
 Maximum amount of revenue we could recover next fiscal yr.
 Projected actual revenue we believe we will recover (98%)
 Projected Indirect Cost Pool budget for 2013
 Over recovery (refunded)
 Number of additional FTEs that would have to be cut to
 impact indirect cost revenues collects and current budget
 = (420466/11.72%)=3,587,594/98,000=36.6
 98,000 = avg. salary & fringes fo field office staff
 Current projected additional FTE reductions
 Sub-total Cost Reductions To-date:
 All
 Sub-total net funding (shortfall) / balance after cost reductions:
 Total Cuts

 Net Diff.
 Projected Fund Balances on June 30, 2013 (see comment below)
 Wagner Peyser
 UI Modernization Act
 Total Cuts
 Check
 Penalty and interest
 Net Diff.
 Check
 Interest Balance on UI reserve fund
 DVOP
 WOTC
 Promise Jobs
 Trade Act
 Offender Re-entry
 Alien Labor
 RES/REA/EUA - hoping we earn this amount!
 Sub-total improved funding positions:
 Net (Shortfall) / Available:
 State Appropriations - Field Operations
 Unemployment
 Comments on SFY June 30, 2013 fund balances:
 Wagner Peyser - This balance will decrease when we move RES/REA/EUC staff to 100% W/P
 UI Modernization Act - our last resort funds to cover UI shortfall
 Penalty and interest - our last resort funds to cover state shortfall
 Interest Balance on UI reserve fund - funds will be depleted by end of year

DVOP - We will need to reduce the Vets positions by 3- 4 to stay within budget. No more than 14 FTEs
 WOTC - We will have to move one full time position to Wagner Peyser
 Promise Jobs - We need approximately 4 to 5 staff added to the budget or we lose these funds
 Trade Act - This money will start converting to Trade Act Training dollars if we don't start spending it on staffing.
 Offender Re-entry - We could afford to have a 4th person, as approved in the legislation, but for only one fiscal year.
 Alien Labor - It may appear to be small but it means we should have a full time person on Alien Labor Certification.
 RES/REA/EUA - hoping we earn this amount! - not sure that current project amounts will equal this total
 State Appropriations - Field Operations - The balance will decrease once we move the RES/REA/EUC staff to 100% Wagner Peyser
 Unemployment - will probably remain relatively unchanged without further action

Spread UI Federal Budget Cuts:
 Projected Fed UI Funding Cuts:
 Field Offices
 Workforce Adm Division Pool
 Field Office Total
 IT Services
 IT, ICON Services, CN
 IT Total
 UI
 Administration
 Tax
 Employee Misclassification
 Field Operations
 Quality Control
 Call Center
 Investigation and Recovery
 Overhead
 UI Total
 LMI SA/IA
 LMI (LT, AR)
 LMI Total
 Appeals (Joe W.)
 Inspections and Appeals (DIA)

Field Office
 Workforce Adm. Pool (& NEG)
 Total Field
 IT Services
 IWD State Board

All
 State
 UI
 (A)
 (B)

SFY2013
 Proposed
 Proposed
 Calculated
 Indirect
 Proposed
 Cuts
 Cuts
 Indirect
 State
 Carry
 Net
 Salaries &
 Cost Rate
 Business
 Salaries
 All Other
 Cost Cuts
 % To
 Fiscal
 Auditor
 Over
 Balance
 Benefits
 Unit Cuts
 & Benefits
 Costs
 (A) * 11.72%
 Total
 Agents
 Fees
 Balance
 Cuts
 State
 Field Offices
 Fed
 Filed Offices
 Fed
 UI
 Fed
 Appeals
 Fed
 LMC
 Sub-Total Fed
 All other
 Approx. FTE Equivalent
 Total
 State
 UI
 All Other
 Indirect Cuts:
 Total
 Share
 Share

Share
Fiscal Agents
State Auditor
Carry forward
Total

Cost
Shift staff &
UI DP
Reductions
Budget to Mike
Adjusted
Charge back
Adjusted
Lori
Joe
Mike
Jude
Gary
sub-total
DIA
Lori FTEs 5/24
Mike reorg
Salary per positions (avg.)

FTEs
 Unemployment:
 Funding Shortfall:
 State
 Federal
 Total
 Plan:
 Cuts that have already occurred
 Additional Cuts:
 Non-staffing cost cuts
 Staffing cuts
 Sub-total additional cuts
 Total cuts
 Remaining (deficient) / surplus
 Additional reduction for time delay in reducing staff (33%)
 (Deicient) / Surplus
 No additional cuts / could potentially reduce FTE reductions from 11 to 9
 Field Operations:
 Funding Shortfall:
 State
 Federal
 UI operational shift - state funding impact - consolidation
 Note 1
 UI operational shift - Federal funding impact - consolidation
 Note 1
 Total
 Plan:
 Cuts that have already occurred
 Additional Cuts:
 Non-staffing cost cuts
 Staffing cuts - State
 Staffing cuts - Federal
 Sub-total additional cuts
 Total cuts
 Remaining (deficient) / surplus
 Additional reduction for time delay in reducing staff (33%)
 (Deicient) / Surplus
 Additional FTE cuts to make up for the possible delay in timeline layoffs / at \$85,000 per FTE
 Note 1: There is no state funding shortfall; however, when UI shifts operations out of the field
 Filed Operations will have to absorb \$700,000 to \$1,000,000 in additional over costs that they
 previously did not have to. These additional costs are being split 80 % state and 20 % federal
 Appeals:
 Funding Shortfall:
 State
 Federal - IWD
 Federal - DIA
 Total
 Plan:
 Cuts that have already occurred - IWD
 Cuts that have already occurred -DIA built into budget
 sub-total cuts already made
 Additional Cuts:
 Non-staffing cost cuts
 Staffing cuts
 Sub-total additional cuts
 Total cuts
 Remaining (deficient) / surplus
 Additional reduction for time delay in reducing staff (33%)
 Note 1
 (Deicient) / Surplus
 The remaining deficient (\$34,242) will have to be made up / \$85,000 per FTE.
 Note 1 - remaining FTE reduction will occur before the start of the year
 LCM:
 Funding Shortfall:
 State
 Federal
 Total
 Plan:
 Cuts that have already occurred
 Projected cost increases
 (negative = increase)
 Additional Cuts:
 Non-staffing cost cuts
 Staffing cuts
 Sub-total additional cuts
 Total cuts
 Remaining (deficient) / surplus
 Additional reduction for time delay in reducing staff (33%)
 (Deicient) / Surplus
 The remaining deficient (\$51,360) will have to be made up / 0.6 FTE at \$85,000 per FTE
 IT:
 Funding Shortfall:
 State
 Federal
 Total
 Plan:
 Cuts that have already occurred
 Proposed additiona costs
 Additional Cuts:

Non-staffing cost cuts
 Staffing cuts
 Sub-total additional cuts
 Total cuts
 Remaining (deficient) / surplus
 Additional reduction for time delay in reducing staff (33%)
 (Deicient) / Surplus
 The remaining deficient (\$370,613) will have to be made up / 3.7 FTEs at \$100,000 per FTE
 DAS:
 Required
 New Costs
 Cuts
 Projected DAS cost increases:
 Utilities - State funds
 Utilities - Fed Funds
 FFS - State funds
 FFS - Fedfunds
 Total State
 Total Fed
 Total
 The increase in DAS utility and FFS costs will result in an additional 10.9 FTEs to be reduced
 Indirect Cost Pool:
 Indirect Rate
 Maximum amount of revenue we could recover next fiscal yr.
 Projected actual revenue we believe we will recover (95%)
 Projected Indirect Cost Pool budget for 2013
 Over recovery (refunded)
 Number of additional FTEs that would have to be cut to
 impact indirect cost revenues collects and current budget
 $= (420466 / 11.72\%) = 3,587,594 / 98,000 = 36.6$
 98,000 = avg. salary & fringes fo field office staff
 Current projected additional FTE reductions
 Difference
 Projected Additional Salary and Fringe Dollars
 Indirect Cost Pool Dollars (11.72 %)
 FTEs @ \$85,000
 FTEs @ \$98,000
 Indirect cost pool needs to reduce FTEs by 1 to 2 FTEs
 Summary
 Cost Cuts
 Cost Cuts
 Cost Cuts
 Fed
 State
 Cost Increase
 Cost Increase
 State Fund
 Cost cuts
 to-be made
 to-be made
 to-be made
 (deficit)
 (deficit)
 Shortfall
 Shortfall
 Fed
 State
 Increase
 Made
 staff - Fed
 staff-State
 non-staff
 time-line
 Surplus
 FTE Cuts
 Unemployment:
 Field Operations:
 Appeals: IWD / DIA
 LCM:
 IT:
 Unattached - related to DAS cost increases:
 Indirect Cost Pool
 Totals
 Projected Remaining FTE cuts:
 State
 Federal
 Timeline / Deficient
 Total
 Unemployment:
 Field Operations:
 Appeals: IWD / DIA
 LCM:
 IT:
 Unattached - related to DAS cost increases:
 Subtotal
 Indirect Cost Pool
 Tota Projected Remaining FTE Reductions

Message: District and Field Office Manager list

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861415
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **District and Field Office Manager list**

From Lewis, Devon [IWD] **Date** Tuesday, August 20, 2013 3:04 PM

To Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]

Cc

 [image001.jpg](#) (3 Kb HTML)  [Field Operations Managers August 2013.xls](#) (41 Kb HTML)

This is the list of District and Regional Managers with contact information. Before you start scheduling road trip hearings please contact the District and Regional or Field Office Manager (they may be one person for both) to arrange for a Q&A session with local office personnel while you are there. District Managers are noted in red following the Regional Mgr name. When it is held and how it is structured is up to the two or three of you. If you have any questions or need any assistance with this, please let me know. I will place a copy of this list in each of the ALJ offices in the WC area.

Thank you for your involvement.

Devon

 **BE GREEN** – Please consider the environment before printing this e-mail.

From: Adams, Lori [IWD]
Sent: Tuesday, August 20, 2013 12:16 PM
To: Lewis, Devon [IWD]
Cc: Hillary, Teresa [IWD]; Wise, Steve [IWD]; Benson, Joni [IWD]
Subject: RE: Appeals In-Person Route 2013

Here is a list of the field office managers (it also includes the district managers, who wear dual hats).

Lori Adams, CPM

Division Administrator/Workforce Services
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319
Phone: (515) 281-9322
Cell: (515) 418-5058
Email: lori.adams@iwd.iowa.gov

 Description: Description: Description:
--



IOWA WORKFORCE DEVELOPMENT MANAGERS

REGION 1 - (DUBUQUE) (Decorah)

REGION 2 - (MASON CITY)

REGION 3 & 4 - (SPENCER)

REGION 5 - (FORT DODGE)

Marla Loecke (Slagle)

Marla Loecke (Slagle)

Linda Gray (Jones)

Sara Messerly

(Jones) Web City

IowaWORKS Northeast Iowa

IowaWORKS North Iowa

IowaWORKS Northwest Iowa

IowaWORKS North Central Iowa

680 Main Street, 2nd Floor

600 S. Pierce

217 W. Fifth Street, P.O. Box 1087

Three Triton Circle

Dubuque, IA 52004-1595

Mason City, IA 50401-4836

Spencer, IA 51301-1087

Fort Dodge, IA 50501

Phone: 563-556-5800

Phone: 641/422-1524

Phone: 712-262-1971 x135

Phone: 515-576-3131 x236

Fax: 563-556-0154

Fax: 641/422-1543

Fax: 712-262-1963

Fax: 515-955-1420

Email: Marla.loecke@iwd.iowa.gov

Email: marla.loecke@iwd.iowa.gov

Email: Linda.Gray@iwd.iowa.gov

Email: Sara.Messerly@iwd.iowa.gov

REGION 6 - (MARSHALLTOWN)

REGION 7 - (WATERLOO)

REGION 8 - (CARROLL)

REGION 9 - (DAVENPORT)

Marilyn Butcher (Slagle)

Ronee Slagle DMgr

Todd Spencer DMgr

Michael Witt

DMgr

IowaWORKS Iowa Valley

IowaWORKS Cedar Valley

IowaWORKS Western Iowa

IowaWORKS Eastern Iowa

3405 S. Center St., P.O. Box 497

3420 University Avenue, Suite G

619 N. Carroll Street

902 W. Kimberly Rd., Suite 51

Marshalltown, IA 50158-0497

Waterloo, IA 50701
Carroll, Iowa 51401-2332
Davenport, IA 52806-5783
Phone: 641-754-1400
Phone: 319-235-2123
Ph. 712-792-2685
Phone: 563-445-3225
Fax: 641-754-1443
Fax: 319-235-1068
Fax 712-792-6605
Fax: 563-445-3240
Email: marilyn.butcher@iwd.iowa.gov
Email: Ronee.Slagle@iwd.iowa.gov
Email: Todd.Spencer@iwd.iowa.gov
Email: Michael.Witt@iwd.iowa.gov
REGION 10 - (CEDAR RAPIDS)
REGION 10 - (IOWA CITY)
REGION 11 - (DES MOINES)
REGION 12 - (SIOUX CITY)
Carlos Vega (Witt)
Scott Mather (Witt)
Marlys Jones DMgr 430 E Grand
Diane Neri
(Spencer)
IowaWORKS
IowaWORKS
IowaWORKS Central Iowa
IowaWORKS Greater Siouxland
Suite #436
1700 S. 1st Ave. Suite 11B
430 East Grand - Second Floor
2508 4th St.
4444 First Avenue NE
Iowa City, IA 52240-6036
Des Moines, IA 50309
Sioux City, IA 51101-2298
Cedar Rapids, IA 52402-3247
Phone: 319-351-1035
Phone: 515-281-9643
Phone: 712-233-9030 x1037
Phone: (319) 365-1104
Fax: 319-351-4433
Fax: 515-281-9650
Fax: 712-277-8438
Fax: 319-365-9270
Email: Scott.Mather@iwd.iowa.gov
Email: Marlys.Jones@iwd.iowa.gov
Email: Diane.Neri@iwd.iowa.gov
Email: Carlos.Vega@iwd.iowa.gov
REGION 13 - (COUNCIL BLUFFS)
REGION 14 - (CRESTON)
REGION 15 - (OTTUMWA)
REGION 16 - (BURLINGTON)
Paula Fastenau (Spencer)
Todd Spencer DMgr
Linda Rouse (Jones)
William Stuflick
(Witt)
IowaWORKS Loess Hills
IowaWORKS Southern Hills

IowaWORKS
IowaWORKS Southeast Iowa
300 W. Broadway, Suite 13
215 N. Elm Street
310 W. Main, P.O. Box 717
1000 N. Roosevelt Avenue
Council Bluffs, IA 51503-9030
Creston, IA 50801-0348
Ottumwa, IA 52501-0717
Burlington, IA 52601-0609
Phone: 712-242-2137
Phone: 641-782-2119 x 33
Phone: 641-684-5401
Phone: 319-753-1671
Fax: 712-242-2155
Fax: 641-782-7060
Fax: 641-684-4351
Fax: 319-753-5881
Email: Paula.Fastenau@iwd.iowa.gov
Email: Todd.Spencer@iwd.iowa.gov
Email: Linda.Rouse@iwd.iowa.gov
Email: William.stuflick@iwd.iowa.gov

Message: No Title

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:14 PM
Item ID: 40861416
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Untitled**

From Lewis, Devon [IWD] **Date** Tuesday, August 20, 2013 3:52 PM
To Hillary, Teresa [IWD]
Cc

 **DEFAULT.doc** (51 Kb HTML)

Devon

 BE GREEN – Please consider the environment before printing this e-mail.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**APPEAL NO. 13A-UI--LT
ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party **request the Appeals Section to reopen the record at the address listed at the top of this decision** or appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

Employment Appeal Board

4th Floor—Lucas Building

Des Moines, Iowa 50319

OR

Fax Number: (515)281-7191

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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 Workforce Development. 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.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.
--

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

Claimant	68-0157 (9-06) - 3091078 - EI
Employer	APPEAL NO. 13A-UI--LT
	ADMINISTRATIVE LAW JUDGE
	DECISION
	OC: /13
	Claimant: Appellant (1)

Iowa Admin. Code r. 871-26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated , 2013 (reference 0) that denied benefits. A telephone hearing was scheduled for , 2013. The appellant did not respond to the hearing notice instructions. Based on the appellant's failure to participate, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Should the representative's decision be affirmed?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which she could be reached for the hearing and did not participate or request a postponement of the hearing as required by the hearing notice.

The administrative law judge has conducted a review of the available administrative file to determine whether the unemployment insurance decision

should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge has carefully reviewed the available evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

Ref. 79

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated , 2013 (reference 0) is affirmed. The representative's decision remains in effect.

Dévon M. Lewis

Administrative Law Judge

Decision Dated and Mailed

dml/

Message: FW: Appeals In-Person Route 2013**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861417
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Appeals In-Person Route 2013

From Lewis, Devon [IWD] **Date** Tuesday, August 20, 2013 4:52 PM

To Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]

Cc

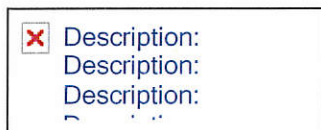
 [points of service map- January312013.jpg](#) (1281 Kb HTML)  [image001.jpg](#) (3 Kb HTML)

[Region map](#)

From: Adams, Lori [IWD]
Sent: Tuesday, August 20, 2013 4:24 PM
To: Lewis, Devon [IWD]
Subject: RE: Appeals In-Person Route 2013

Lori Adams, CPM
 Division Administrator/Workforce Services
 Iowa Workforce Development
 1000 East Grand Avenue
 Des Moines, IA 50319

Phone: (515) 281-9322
Cell: (515) 418-5058
Email: lori.adams@iwd.iowa.gov



Please consider the environment before printing this e-mail.

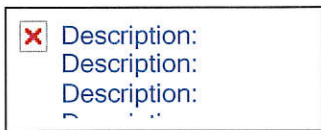
From: Lewis, Devon [IWD]
Sent: Tuesday, August 20, 2013 2:48 PM
To: Adams, Lori [IWD]
Subject: RE: Appeals In-Person Route 2013

Thanks for the list, Lori. Do you happen to have a Field Office map? Mine dates back to 1991!

From: Adams, Lori [IWD]
Sent: Tuesday, August 20, 2013 12:16 PM
To: Lewis, Devon [IWD]
Cc: Hillary, Teresa [IWD]; Wise, Steve [IWD]; Benson, Joni [IWD]
Subject: RE: Appeals In-Person Route 2013

Here is a list of the field office managers (it also includes the district managers, who wear dual hats).

Lori Adams, CPM
Division Administrator/Workforce Services
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319
Phone: (515) 281-9322
Cell: (515) 418-5058
Email: lori.adams@iwd.iowa.gov



Please consider the environment before printing this e-mail.

From: Lewis, Devon [IWD]
Sent: Monday, August 19, 2013 9:46 PM
To: Witt, Michael [IWD]; Jones, Marlys [IWD]; Spencer, Todd [IWD]; Slagle, Ronee [IWD]
Cc: Adams, Lori [IWD]; Hillary, Teresa [IWD]; Wise, Steve [IWD]; Benson, Joni [IWD]
Subject: Appeals In-Person Route 2013

It was a pleasure meeting everyone last Thursday and I look forward to working together for

increased and improved communication between Appeals and local offices. I've attached a copy of the 2013 road trip schedule. I will ask the ALJs to contact the Regional Manager a couple of weeks before their trip when they are getting ready to schedule hearings so they can incorporate some time for Q&A with local office personnel. Marlys, we can chat separately about how you would like to structure ALJ visits to 430. We have ALJs at 150 most days/weeks.

Would someone please share an updated list of regional managers that I can pass along to ALJs?

Thank you,
Dévon

Dévon M. Lewis
Administrative Law Judge
Iowa Workforce Development
1000 E Grand Ave
Des Moines IA 50319-0209
515.281.3747
800.532.1483
devon.lewis@iwd.iowa.gov

 BE GREEN – Please consider the environment before printing this e-mail.

NOTICE: This e-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 USC §§ 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error and then delete it. Thank you.

Message: bio**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861418
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **bio**

From Lewis, Devon [IWD] **Date** Tuesday, August 20, 2013 5:26 PM
To Hillary, Teresa [IWD]
Cc

Bio - Dévon M. Lewis

After graduating from Drake Law School and passing the bar exam in 1988, I worked briefly in private practice before working for Legal Aid Society of Polk County n/k/a Iowa Legal Aid, primarily in the area of administrative law. My son, David, now 21 and a senior in college, was born shortly before I started work as an ALJ for "Job Service of Iowa" on July 1, 1992. Through the agency name changes, and a one-year stint as a Deputy Workers' Compensation Commissioner, I returned "home" to UI.

My fiancé, Duane Wilkey, who moved to Ames from Erie, Pennsylvania, is a wonderfully patient man. His twin son, Andy, followed and is attending ISU. His twin daughter, Deirdre, has been an Army wife to Chris Clark for the past few years and they just gave Duane and me our first grandson, Milo, in June! We hope to convince them to stay in Iowa when Chris leaves military life in late September. Duane has really become an Iowan and even helped recruit an Erie physician and his family to move to Pella! Our restored 1920's timber-frame barn and prairie near Boone provides an escape with our three rescue dogs and a place to entertain. Our two horses, a Friesian and a Friesian/Morgan/Arab do not see enough of us and our sadly neglected home perennial garden sees even less of us.

Dévon



BE GREEN – Please consider the environment before printing this e-mail.

Message: bio

Case Information:

Message Type: Exchange
Message Direction: External, Outbound
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:14 PM
Item ID: 40861442
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **bio**

From Lewis, Devon [IWD] **Date** Wednesday, August 21,
2013 7:02 PM
To Hillary, Teresa [IWD];
't.hillary@mchsi.com'
Cc

 [Bio.docx](#) (21 Kb HTML)

Try this version... still TMI?

Devon



BE GREEN – Please consider the environment before printing this e-mail.

Bio - Dévon M. Lewis

After graduating from Drake University Law School and passing the bar exam in 1988, I worked briefly in private practice and then for Legal Aid Society of Polk County n/k/a Iowa Legal Aid, in the area of administrative law before I started work as an ALJ for "Job Service of Iowa" on July 1, 1992. Through the agency name changes to Iowa Workforce Development, and one-year as a Deputy Workers' Compensation Commissioner, I returned "home" to the Unemployment Insurance Appeals Bureau.

My son, David, is a senior at Cornell College. Duane, my fiancé, moved to Iowa from Pennsylvania, and brought with him a fraternal twin son, Andy, who attends ISU. Andy's twin, Deirdre, has been an Army wife for the past few years and she and her husband, Chris, gave Duane and me our first grandson in June! We hope to convince them to stay in Iowa when Chris leaves military life in late September. We travel but escape locally with friends, family and our three dogs to a restored 1920's timber-frame barn and prairie near Boone. Riding and driving our two horses, a Friesian and a Friesian/Morgan/Arab, and tending our perennial garden also keep us busy and entertained.

Message: FW: Continuance

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:15 PM
 Item ID: 40861452
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **FW: Continuance**

From	Lewis, Devon [IWD]	Date Thursday, August 22, 2013 7:00 PM
To	Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]	

Cc

 [ALJ Desk Manual Procedure - Postponement \(4\).docx](#) (21 Kb HTML)

Bonny has addressed the continuance section of the desk manual. Does anyone have anything else to add? Shall we discuss our various interpretations to find some common ground for the sake of a degree of consistency?

From: Hendricksmeier, Bonny [IWD]
Sent: Tuesday, August 13, 2013 8:53 AM
To: Lewis, Devon [IWD]
Subject: Continuance

PROCEDURE - Postponement

STATUTE

None

ADMINISTRATIVE RULE

871 IAC 26.8(2) Reference Code 92

A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of an extreme emergency.

CASE LAW

REASONING STATEMENTS

NOTES

Discovery requests may entail a postponement.

1. 871 IAC 26.9(9) states in part:

Requests for discovery received within five days before a scheduled contested case hearing will not be honored in the absences of a request for a postponement showing good cause therefore. **A party's inattention to preparation is not good cause for postponement.**

Message: FW: DOL standards fun facts**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:15 PM
 Item ID: 40861455
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: DOL standards fun facts

From	Lewis, Devon [IWD]	Date Friday, August 23, 2013 10:21 AM
To	Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]	
Cc		

Good idea, Marlon. I will number topical paragraphs for ease of reference when responding. Please 'reply all' for the discussion.

1. Remands for more evidence. The most significant information we got is that the largest waste of time and resources on remands comes from having to reopen the record to take more evidence. That means we do not get to use another appeal number as in a remand for a new hearing where the clock starts over, but we use the same number. It also takes up a hearing space that could go to another file. The advice was to be thorough in your hearings and fully develop the record. That does not mean you need to address additional issues, but inquire fully about the issues that are on the hearing notice so you can support your decision.
2. Remands for lack of notice. Remands due to on the record decisions where the Board decides the party did not get notice are not a concern and are not within the

control of the ALJ. However, we must support our decisions with a record. That means taking and *recording* late calls or returning late call messages from the clerks. It also means reviewing and printing the FF record you use in making your decision on the record and placing it in the file. This is info we use to support our decision and the Board needs that to know what we used in our decision-making process in order for them to affirm or avoid remanding.

3. OTR Decisions & Administrative Record. This also raises the question of what do we consider the “administrative record” when we refer to taking official notice of the admin record. For me that generally includes the FF interview notes and any attached documents from ERIC. If I reference any tn3270 screens to make a decision about wages, payments, claims, etc. I also print those for the file. In short, anything I use to support my decision. Until we get a default rule through, we must still review the admin record if we do not hold a hearing on an appellant no-call or where neither party calls.
4. Effective efficiency. The general feedback on a similar point is that some take 2 or 3 hours to do what most others do in 45 minutes or an hour. But, conversely, some rush through when more time was required to develop the record. Effective efficiency seems to be the goal from that perspective.
5. General interpretation consistency. The final point that stymies the Board is the inconsistency between ALJs on some topics. We are working on those issues from the Appeals-Claims perspective, but one they mentioned is forced resignations or “quit or be fired” scenarios. I will share my analysis and ask for discussion and shared language on this topic so we can find common ground on the interpretation of the rule – and develop part of the desk manual at the same time. Remember, this concern does not mean we have to be uniform with factual interpretation, but these are error of law issues. I’ve done an about-face on a couple of these over the years.

REFERENCE CODE 198

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

(I always ask in this scenario if the C would have been allowed to continue working had he not resigned.) Since claimant would not have been allowed to continue working had he not resigned, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

As always, I appreciate my colleagues’ insight. Thank you for sharing your thoughts.

Dévon



BE GREEN – Please consider the environment before printing this e-mail.

From: Mormann, Marlon [IWD]
Sent: Friday, August 23, 2013 5:07 AM
To: Lewis, Devon [IWD]
Subject: RE: DOL standards fun facts

The staff meetings are going a little long. Maybe we should start the discussion now.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Thursday, August 22, 2013 6:29 PM
To: Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]
Subject: RE: DOL standards fun facts

Oh, and we learned that the number of remands does not warrant great action just to reduce the number of remands. But there are some frequent flier issues that we will address in upcoming staff meetings and group discussions.

From: Lewis, Devon [IWD]
Sent: Thursday, August 22, 2013 6:03 PM
To: Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]; Lewis, Devon [IWD]
Subject: DOL standards fun facts

Teresa, Deb and I learned several things in our meeting with Rick Autry (atty for EAB). One of them is that making 30 days when possible is critical as it directly affects our funding (read: jobs, computers, etc.). Another is that if you are faced with a 45 day deadline on a decision near the end of the month, meet whichever date is first. So, the 30, 45 and month end dates are critical and more important than FIFO. A final piece of info is how important the figure is for average age of pending cases. It takes several timely 30 day cases to offset just one old case on our stats. Again, a funding issue – not to mention the customer service aspect. We are getting closer to seeing those 30 day deadlines again on double party cases. Slow but steady progress.

Devon



BE GREEN – Please consider the environment before printing this e-mail.

Message: default with new appeal rights language

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:15 PM
Item ID: 40861456
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **default with new appeal rights language**

From Lewis, Devon [IWD] **Date** Friday, August 23, 2013 1:50 PM
To Hillary, Teresa [IWD]
Cc

 **DEFAULT.doc** (50 Kb HTML)

Devon

 BE GREEN – Please consider the environment before printing this e-mail.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**APPEAL NO. 13A-UI--LT
ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Bureau, 1000 E Grand Ave, Des Moines IA 50319 or fax 515-242-5144, to reopen the record, or appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

*Employment Appeal Board
4th Floor—Lucas Building
Des Moines, Iowa 50319
OR
Fax Number: (515)281-7191*

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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 Workforce Development. 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.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

Claimant Employer	68-0157 (9-06) - 3091078 - EI APPEAL NO. 13A-UI--LT ADMINISTRATIVE LAW JUDGE DECISION OC: /13 Claimant: (1)
------------------------------	--

Iowa Admin. Code r. 871-26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated , 201 (reference 0) that benefits. A telephone hearing was scheduled for , 201. The appellant did not respond to the hearing notice instructions. Based on the appellant's failure to participate, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Should the representative's decision be affirmed?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which the representative could be reached for the hearing and did not participate or request a postponement of the hearing as required by the hearing notice.

The administrative law judge has conducted a review of the available administrative file to determine whether the unemployment insurance decision should be affirmed.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge has carefully reviewed the available evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

Ref. 79

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

DECISION:

The unemployment insurance decision dated , 201 (reference 0) is affirmed. The representative's decision remains in effect.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed
dml/

Message: Clinton Thomas 13B-UI-06072 Request for Rehearing

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:15 PM
Item ID: 40861461
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Clinton Thomas 13B-UI-06072 Request for Rehearing**

From Lewis, Devon [IWD] **Date** Friday, August 23, 2013 3:16 PM
To Autry, Rick [DIA]
Cc Hillary, Teresa [IWD]

Judge Mormann reversed the fact-finder and allowed benefits on the separation issue but later affirmed the related overpayment decision when he should have reversed. The claimant appealed and the Board affirmed on August 13, 2013 when it should have reversed Judge Mormann's decision. The claimant called asking that the decision be changed. Please set the matter for rehearing.
Thank you for your consideration.

Devon M. Lewis
Administrative Law Judge
Iowa Workforce Development
1000 E Grand Ave
Des Moines IA 50319-0209
515.281.3747
800.532.1483
devon.lewis@iwd.iowa.gov



BE GREEN – Please consider the environment before printing this e-mail.

NOTICE: This e-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 USC §§ 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error and then delete it. Thank you.



Message: FW: Clinton Thomas 13B-UI-06072 Request for Rehearing

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:15 PM
Item ID: 40861463
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Clinton Thomas 13B-UI-06072 Request for Rehearing

From Lewis, Devon [IWD] **Date** Friday, August 23, 2013 3:18 PM
To Hillary, Teresa [IWD]
Cc

They don't have a mechanism to reopen on their own motion so asked that I make the request from IWD.

From: Autry, Rick [DIA]
Sent: Friday, August 23, 2013 3:17 PM
To: Lewis, Devon [IWD]
Subject: RE: Clinton Thomas 13B-UI-06072 Request for Rehearing

Thanks, we'll set up it for rehearing.

From: Lewis, Devon [IWD]
Sent: Friday, August 23, 2013 3:16 PM
To: Autry, Rick [DIA]
Cc: Hillary, Teresa [IWD]
Subject: Clinton Thomas 13B-UI-06072 Request for Rehearing

Judge Mormann reversed the fact-finder and allowed benefits on the separation issue but later affirmed the related overpayment decision when he should have reversed. The claimant appealed and the Board affirmed on August 13, 2013 when it should have reversed Judge Mormann's decision. The claimant called asking that the decision be changed. Please set the matter for rehearing.

Thank you for your consideration.

Devon M. Lewis
Administrative Law Judge
Iowa Workforce Development

1000 E Grand Ave
Des Moines IA 50319-0209
515.281.3747
800.532.1483
devon.lewis@iwd.iowa.gov



BE GREEN – Please consider the environment before printing this e-mail.

NOTICE: This e-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 USC §§ 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error and then delete it. Thank you.

Message: FW: List requests from the meeting**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:15 PM
 Item ID: 40861465
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: List requests from the meeting

From Lewis, Devon [IWD] **Date** Friday, August 23, 2013 8:24 PM

To Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]

Cc

 [Glossary of Acronyms.doc](#) (45 Kb HTML)  [Glossary of Transactions.doc](#) (41 Kb HTML)
 [image001.jpg](#) (3 Kb HTML)  [Program Codes.docx](#) (15 Kb HTML)  [UISC Specialized Team Members.xlsx](#) (23 Kb HTML)

Some have been looking for this info so am sending it again.

From: West, Ryan [IWD]
Sent: Tuesday, July 23, 2013 2:48 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Subject: List requests from the meeting

Devon, Teresa, I have attached 4 list's here and they include,

Glossary of Acronyms

Glossary of Transactions – These are all the different transactions we can run to look at a claim

“DBRO, NMRO, etc.” I believe some in your group needed “SIDI and LEMP” if I remember correctly.

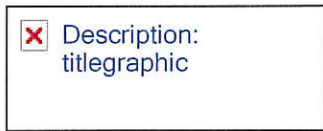
Program Codes – This is what will show up on the far right of DBRO on the 2nd, 3rd, etc. pages and will show what the claim is paying.

ANDS List – This list changes from time to time and the Director has requested more so I would suggest that if you want to see the most up to date list that you go to SharePoint. From there click the Home tab on the far left. From there pick the fourth one down, “Unemployment Insurance Manuals and Policy Memo”. From there click on the top folder next to ANDS. When that opens you will see all the different sections.

Contact List – Attached

Let me know if I am missing anything.

Ryan West
Regional Operations Manager
Iowa Workforce Development
(515) 242-0413 P
(515) 281-9321 F



- [\[Heading 1\]](#)
 - [\[Glossary\]](#)
 - [\[ACRONYMS \]](#)
 - [\[IBWI – Interstate Benefits Withdrawal/Invalid Claim Information \(WIC\)\]](#)
 - [\[TGAA –Trade and Globalization Adjustment Assistance Act\]](#)
 - [\[WIC - Withdrawal/Invalid Claim Information \(now IBWI\)\]](#)

Glossary

ACRONYMS

Used in SCM-1 or in Normal UI Claim Language

203 – Notice of Separation or Refusal of Work form (60-0154)

216 – The generic name of the Request for Omitted Wage Credits form (60-0161).

2-BYE – Second Benefit Year

931 – Request for Wage and Separation Information (form 62-2048) – Form used to obtain information from a Federal employer.

935 – Affidavit of Federal Services, Wages, and Reason for Separation (form 68-0235) – Form completed by applicant concerning Federal employment.

970 – Request for Military Wages (form 62-2052) – Form used to obtain Military wages.

1099 – The tax form mailed to applicants during mid to late January each year, identifying gross benefits paid during the prior calendar year, for income tax purposes.

A & A – Able and Available

AC – Additional Claim

ACH – Automated Clearing House – The processing hub for direct deposit of benefit payments.

ALJ – Administrative Law Judge

ANDS – Automated Non-monetary Decision System – The system into which “canned” or typed decisions related to an unemployment claim are entered. It is accessed by the SIR2 transaction.

APD – Amount Paid to Date – The UI benefit amount that has been paid to the claimant since the OC date of the claim.

AWW – Average Weekly Wage

Balance – Amount of potential UI benefits remaining on a UI claim. It is the MBA less the APD.

BC or BCL – Business Closing

BPC – Benefits Payment Control

BTQ – Benefits Timliness Quality (federal standards for payment of UI)

BWE – Benefit Week Ending Date

BYE – Benefit Year Ending date – The expiration date of an unemployment claim.

CSRU – Child Support Recovery Unit

CWC – Combined Wage Claim – A type of claim in which wages earned during the base period, in different states, are combined with wages earned, if any, in the base period of the paying state. This normally increases an applicant's monetary eligibility.

CWCT – Combined Wage Claim Transfer – Base period wages are transferred to another state for use in a CWC claim in that state.

D – Direct Deposit (payment method)

DC – Debit Card (payment method)

DAT – Department Approved Training

DNR – Did Not Report

DUA – Disaster Unemployment Assistance – The name of the program for persons not eligible for regular unemployment insurance, as the result of disaster that has been so declared by the President.

EB – Extended Benefits – The name of the Iowa program for applicants who exhausted their regular UI entitlement. The program is only in effect when the Iowa insured unemployment rate reaches a specified level.

ERA – Electronic Records Access

ERIC – Electronic Records Information Center

ERP – Eligibility Review Program

ETA – Employment and Training Administration

EUC – Extended Unemployment Compensation – The name of the most recent Federal program for applicants who exhausted their regular UI entitlement.

HDO – High Demand Occupation

IB-1 – Initial Interstate Claim form (61-1000)

IB-4 – The electronic form used to request wages from another state, to establish a CWC claim.

IB-5 – Report sent to each state transferring wages to Iowa for a CWC claim. It lists potential charges to each state and the percentage of base period wages from each state.

IBWI – Interstate Benefits Withdrawal/Invalid Claim Information (WIC)

ICON – The name of a pictorial representation of a file, database or program shown on a computer screen.

ICON System – The computer system used to transmit data between an agent state and liable state.

INA – Information Not Available

IRORA – Interstate Reciprocal Overpayment Recovery Arrangement – an agreement among the states to assist each other in recovering overpayments

IVR – Interactive Voice Response

IWD – Iowa Workforce Development

JIF – Joint Intake Form

Language Link – The interpreter service used with non-English speaking clients

LDW – Last Day Worked

LO – Local Office

LQE – Lacks Qualified Earnings – The status of a claim with some base period wages, but insufficient wages to be monetarily valid.

MBA – Maximum Benefit Amount

MIUI – My Iowa Unemployment Insurance

Monetarily Valid – A claim with sufficient base period wages to have an MBA and WBA.

NOC – Notice of Claim- 201A form (65-5317)

NR – No Record – The status of a claim with no base period wages

OC DATE – Original Claim Date – The effective date of an unemployment claim.

OFC - Office

OFFSET – A benefit payment used to reduce an outstanding overpayment.

OP - Overpayment

PIN – Personal Identification Number.

R/C – Reimbursable/Contributory – Employer type.

REA – Re-Employment Assessment

RES – Re-Employment Services

RIF – Reduction in Force

RW – Refused Work

RW/R – Refused Work or Referral

SIC code – Standard Industrial Classification code – The code used to identify the primary activity of an employer.

SIDES – State Information Data Exchange System

SIR – Special Investigative Report

SPLIT – A weekly benefit payment that was partially used to offset an overpayment with the balance paid to the applicant.

SSN – Social Security Number

STA/DESK – Station and desk of the SC Representative taking action on a claim. It is normally the last four digits of the Representative's SSN.

TEB – Training Extended Benefits. Allows payment of a 26 week Training Extension if approved.

TAA – Trade Adjustment Assistance

TGAA – Trade and Globalization Adjustment Assistance Act

TRA – Trade Readjustment Act

TTY – Telephone service used for communicating with applicants who are hard of hearing – if the applicant has the necessary equipment.

UCFE – Unemployment Compensation for Federal Employees

UCX – Unemployment Compensation for Ex-servicemen

UI – Unemployment Insurance

UISC – Unemployment Insurance Service Center

VAP – Virtual Access Points

VOIP – Voice Over Internet Phone

VQ – Voluntary Quit

VRU – Voice Response Unit

VSW – Voluntary Shared Work

W – Warrant (payment method)

WBA – Weekly Benefit Amount

WDC – Workforce Development Center

W/E – Week Ending date – The abbreviation used for week ending date.

WIC - Withdrawal/Invalid Claim Information (now IBWI)

WS – Work Search

- [\[Heading 1\]](#)
 - [\[Glossary\]](#)
 - [\[TRANSACTIONS\]](#)

Glossary

TRANSACTIONS

Accessed on a CICS Mainframe Session

ALPH – An employer name search transaction used to locate an employer account number.

APLF – Appeal information

ASN1 – Tax bureau investigation accessed by assignment number.-No longer used

ASN2 – Tax bureau investigations accessed by employer account number.-No longer used

ASN3 – Search for tax bureau investigations by employer name. No longer used

(Use Myiowau.org. Enter the "A" number listed on KLOG. The deputy has sent it on to Tax to research if there are missing wages or perhaps a business closing. Click Search Workflow on left side, enter A number from KLOG in Workflow, will show A number below-click on it and read response from TAX).

DAWG – Transaction used to add, delete and transfer base period wages. Only available to UISC staff.

DBIN – Data Base Inactive – The prior claim if a claim is on DBRO, or the most recent claim if no claim is on DBRO

DBRO – Data Base Read Out – The current claim.

EMP1 – Employer information accessed by State account number.

EMP2 – Employer information accessed by Federal ID number.

ES2S – An employer name search transaction used to locate an employer account number.

FLAG – A listing of activity flags on a claim.

HAND – Handbook – The transaction to access the Interstate Handbook.

HRIS – Human Resources (payroll system to record hours worked/time off)

IBIQ – The inquiry screen to determine wages earned and claim status in another state.

IBWI – Interstate Benefits Withdrawal/Invalid claim information - screen that allows states to send messages to each other regarding specific claims

ICER – See ISDCICSP.

JIF1 – A transaction used to enter claims into the computer – a backup to common intake.

JIF9 – The transaction used to delete a claim on the same day it is filed.

JIFD – The transaction used to delete or cancel a claim on the mainframe. Only available to UISC Staff.

JPIN – The transaction used to reset an applicant’s PIN number.

JSRH – The transaction used to locate a claimant’s SSN, using the person’s name.

K99G – Transaction used to request a duplicate 1099-G.

KCCD – The transaction used to delete a weekly claim on the working day in which the weekly claim was phoned in (Monday for weeks phoned in on Saturday or Sunday).

KCCH – The transaction used to order a printout listing weekly claim responses for any previous week (s).

KCCO – A listing of the of weekly claim responses for the previous six weeks.

KCCV – Transaction used to manually enter weekly-continued claims.

KCHO – Choice – The transaction used to “flip” active (DBRO) and inactive (DBIN) claims.

K742/KDBC/KDBU – Data Base Update – The transaction used to make data changes on a DBRO claim.

KDDI – The transaction used to update direct deposit information.

KFFD – The transaction used to see when a fact-finding is scheduled and to enter notes for a fact-finding.

KFFI – Fact finding itinerary – list by day/location of scheduled fact-finding interviews (view only)

KFFS – Transaction used to schedule fact-finding interviews

KFFV – Transaction allows View Only access to Fact-finding schedules

KLCK – Lock - The transaction used to lock or unlock a claim.

KLOG – Log – The listing of historical claim changes/activity.

KSRA – Child Support Recovery Assistance – A summary of child support withheld from UI benefit payments

KPY1 – The listing of net benefit payments and deductions from the gross benefit payment.

KPY3 – The listing of gross annual benefits paid for 1099 tax purposes.

KPYX – The listing of FAC (Federal Additional Compensation)

KRDO – Transaction used to order a "hard copy" printout of a claim

KTEB – Allows you to view TEB balance, schooling & progress report information

KTEP – Allows you to view TEB payments

KTRA – Allows you to view TRA balance dates & program information

KTRP – Allows you to view TRA payments

KUPY – The transaction used to issue underpayments.

LEMP – transaction allows you to see employer name & address for 000000 last employer

NMRO – Non-Monetary Read Out – The listing of ANDS decisions entered on a claim.

OVPI – Overpayment – The listing of current and historical overpayment activity.

RECP – Reception – This transactions displays basic demographic information on an applicant, summarizes ODDS and DBRO status and lists wages paid

SESMGR – Session Manager – Transaction on the main CICS Mainframe session menu used to access multiple mainframe sessions.

SIR1 – The transaction used to generate an SIR

SIR2 – The transaction used to enter ANDS decisions.

SIR3 – The transaction used to override ANDS decision (available only to selected UISC staff)

SUSP – Suspense – A list of claims activity and notes for the claim for past 45 days.

TEUA –The transaction allows additional 'Tiers' of benefits to be added to a claim already receiving Federal Extension Benefits (EUC)

TEUC –The transaction allows Federal Extension benefits (EUC) to be added to a claim

WAGEA – A listing of wages for the last five calendar quarters.

WAGEB – Information on an employer whose account is listed on WAGEA or WAGEC.

WAGEC – A listing of wages from all employers for the last four years.

[Preview is not available (conversion excluded for this file type).]

<p>Program Codes, this could be page 2, 3, etc. of DBRO. "Federal Supplemental Benefits" is EUC. Most of the time you will see 01 and then 10.</p>	<p>Program</p> <p>01 = UI Regular</p> <p>02 = Federal Regular</p> <p>03 = Joint Regular</p> <p>04 = UI Extended</p> <p>05 = Federal Extended</p> <p>06 = Joint Extended</p> <p>07 = Waiting Week UI</p> <p>08 = Waiting Week FE</p> <p>09 = Waiting Week Joint</p> <p>10 = UI Federal Supplemental Benefits</p> <p>11 = FE Federal Supplemental Benefits</p> <p>12 = Joint Federal Supplemental Benefits</p>
--	--

UISC Specialized Staff

Name

Telephone

Specialized Program

Deputy

Sta Desk

Supervisor

Gary Batten

242-0421

Workman's Comp

04

2197

Ryan West

Dianne Dawson

281-9043

Missing Wages

95

2199

Brenda Boten

Karen Holett

242-0455

Missing Wages

39

4353

Ryan West

Kasandra Ellenwood

242-0450

Wrong Last Employer, Business Closings and 2nd Benefit Year Requalifications

Brenda Boten

Lisa Stielow

242-0480

Too Late Protests, Business Closings and 2nd Benefit Year Requalifications

56

6195

Brenda Boten

Matt Gifford

242-0483

TRA (Trade)

80

8822

Brenda Boten

Ryan Moses

242-0429

Combined Wage Claims (CWC)

Dave Eklund

Veronica Young

281-9349

Combined Wage Claims (CWC)

53

5523
Dave Eklund
Jeniffer Nutting
242-0478
Training Extension Benefitis (TEB)
44
8131
Brenda Boten
Christina Steen
242-0467
Training Extension Benefitis (TEB)
85
1594
Brenda Boten
Tom Tavegia
242-0473
Federal and Military Claims (FED/MIL)
68
3046
Ryan West
Ray Dyer
281-9344
Alternate Base Period Claims (ABP)
Ryan West
Michelle Saddoris
242-0482
Direct Deposit Rejects, Debit Card Issues and Vendor Offsets
Dave Eklund
Connie Dykstra
242-0427
Voluntary Shared Work, Employer Filed Claims and Vacation/Severance
99
4327
Dave Eklund
Marlys Guy
242-0441
Overpayments
05
7530
Dave Eklund
Kirsten Wood
242-0416
Overpayments
98
3934
Dave Eklund
Evelyn Ruby
242-0436
Tax Intercepts, 1099's and Overpayments
26
4997
Dave Eklund
Nhoui Knounlo
242-0438
Returned and Forged Warrants
37
4760
Dave Eklund
Lisa Kolontar
281-8228

Chargebacks
11
1071
Dave Eklund

3/4

Message: Re: fyi

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:15 PM
Item ID: 40861492
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Re: fyi**

From Lewis, Devon [IWD] **Date** Wednesday, August 28, 2013 11:19 AM
To Hillary, Teresa [IWD]
Cc

Just leaving Devil's Tower.

Dévon

On Aug 28, 2013, at 8:43 AM, "Hillary, Teresa [IWD]" <Teresa.Hillary@iwd.iowa.gov> wrote:

Just an fyi, no more work e-mail while you are on vacation. BTW your puter is at the help desk. Thanks much for talking to me last night.

From: Dawson, Dianne [IWD]
Sent: Wednesday, August 28, 2013 9:42 AM
To: Hillary, Teresa [IWD]
Subject: RE:

Ok thanks!!!

From: Hillary, Teresa [IWD]
Sent: Wednesday, August 28, 2013 9:42 AM
To: Dawson, Dianne [IWD]
Subject: RE:

Should have read the whole thing. Devon went to the EAB to tell them to fix it before she left on vacation. Will take them some time to do so. If you do not have it fixed in two

weeks, can you ping me and devon back.

Thanks

From: Dawson, Dianne [IWD]
Sent: Wednesday, August 28, 2013 9:28 AM
To: Hillary, Teresa [IWD]
Subject: FW:

Ever get a chance to look at this?

From: Hillary, Teresa [IWD]
Sent: Thursday, August 22, 2013 9:00 AM
To: Dawson, Dianne [IWD]
Subject: RE:

I forgot, printed will be back to you by 11:30 today. Thanks for the reminder, sorry.

Teresa K. Hillary

Iowa Workforce Development
1000 E Grand Avenue
Des Moines IA 50319

Phone: 515.725.2683

FAX: 515.242.5144

From: Dawson, Dianne [IWD]
Sent: Thursday, August 22, 2013 8:53 AM
To: Hillary, Teresa [IWD]
Subject: FW:

Have you had a chance to look at this appeal?

From: Hillary, Teresa [IWD]
Sent: Thursday, August 15, 2013 4:46 PM
To: Dawson, Dianne [IWD]
Subject: RE:

I will get back to you tomorrow. Thanks for being patient.

From: Dawson, Dianne [IWD]
Sent: Thursday, August 15, 2013 2:56 PM
To: Hillary, Teresa [IWD]
Subject:

Can you help me?

Could you look at the appeal decisions (appeal board decision). The discharge issue was

reversed to allowance.

But before that happened the overpayment decision was issued. Then it was affirmed with appeals and appeal board.

We removed the overpayment based on the reversed decision but not sure why ALJ/appeal board would affirm overpayment.

Claimant is calling thinking he has the overpayment

Your thoughts please

<image001.png>

Message: Re: fyi

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:15 PM
Item ID: 40861490
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Re: fyi**

From Lewis, Devon [IWD] **Date** Wednesday, August 28, 2013 11:20 AM
To Hillary, Teresa [IWD]
Cc

Sorry, I forgot to copy her in. I like talking to you anytime. Hang in there.

Dévon

On Aug 28, 2013, at 8:43 AM, "Hillary, Teresa [IWD]" <Teresa.Hillary@iwd.iowa.gov> wrote:

Just an fyi, no more work e-mail while you are on vacation. BTW your puter is at the help desk. Thanks much for talking to me last night.

From: Dawson, Dianne [IWD]
Sent: Wednesday, August 28, 2013 9:42 AM
To: Hillary, Teresa [IWD]
Subject: RE:

Ok thanks!!!

From: Hillary, Teresa [IWD]
Sent: Wednesday, August 28, 2013 9:42 AM
To: Dawson, Dianne [IWD]
Subject: RE:

Should have read the whole thing. Devon went to the EAB to tell them to fix it before she left on vacation. Will take them some time to do so. If you do not have it fixed in two

weeks, can you ping me and devon back.

Thanks

From: Dawson, Dianne [IWD]
Sent: Wednesday, August 28, 2013 9:28 AM
To: Hillary, Teresa [IWD]
Subject: FW:

Ever get a chance to look at this?

From: Hillary, Teresa [IWD]
Sent: Thursday, August 22, 2013 9:00 AM
To: Dawson, Dianne [IWD]
Subject: RE:

I forgot, printed will be back to you by 11:30 today. Thanks for the reminder, sorry.

Teresa K. Hillary

Iowa Workforce Development
1000 E Grand Avenue
Des Moines IA 50319

Phone: 515.725.2683
FAX: 515.242.5144

From: Dawson, Dianne [IWD]
Sent: Thursday, August 22, 2013 8:53 AM
To: Hillary, Teresa [IWD]
Subject: FW:

Have you had a chance to look at this appeal?

From: Hillary, Teresa [IWD]
Sent: Thursday, August 15, 2013 4:46 PM
To: Dawson, Dianne [IWD]
Subject: RE:

I will get back to you tomorrow. Thanks for being patient.

From: Dawson, Dianne [IWD]
Sent: Thursday, August 15, 2013 2:56 PM
To: Hillary, Teresa [IWD]
Subject:

Can you help me?

Could you look at the appeal decisions (appeal board decision). The discharge issue was

reversed to allowance.

But before that happened the overpayment decision was issued. Then it was affirmed with appeals and appeal board.

We removed the overpayment based on the reversed decision but not sure why ALJ/appeal board would affirm overpayment.

Claimant is calling thinking he has the overpayment

Your thoughts please

<image001.png>

Message: RE: Reference manual

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:27 PM
Item ID: 40861730
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Reference manual**

From Lewis, Devon [IWD] **Date** Friday, November 01, 2013 3:02 PM
To Wahlert, Teresa [IWD]
Cc

 [=====ALJ Desk Manual TABLE OF CONTENTS - Topic Draws=====doc](#) (42 Kb HTML)

Here it is. The red ALJ initials (including Nic O) are at the beginning of their topic assignment and cover everything down to the next set of red ALJ initials. I'm feeling noticeably better every day. Have a good weekend.
Dévon

-----Original Message-----

From: Wahlert, Teresa [IWD]
Sent: Friday, November 01, 2013 2:46 PM
To: Lewis, Devon [IWD]
Subject: Reference manual

When you feel better please send me which ALJs have which topics to be developing
- thx

- Teresa Wahlert

ALJ DESK MANUAL – TABLE OF CONTENTS

Able to & Available for Work (Eligibility) **DL**

Failure to Report

LOA

Medical

On-Call Employment

Partial Unemployment

Reasonable Assurance

Reemployment Services

Work Search

Additional Programs **JT**

DAT

DUA

EUCU

TEB

TEUC

TRA

ALR Annotations **LD**

Business Closure **LD**

Charges **DW**

Government contributory

Relief – DAT, EUC, Disaster

Requalification

Rule of two affirmances

Supplemental employment

Sole purpose

Citations

Claim **BS**

Backdate

Cancellation

CWC

Monetary Eligibility

Reemployment Services

Retroactive

Decisions **DW**

Decisions – OTR/Default

Decisions – Writing

Disability/Reasonable Accommodation **DW**

Discharge/Misconduct (Disqualification)**RS**

General/Definition

Absenteeism **VS**

Current Act **RS**

Deferred Judgment/Alford Plea

Dependent Abuse – Adult

Dependent Abuse – Child **RS**

Drug Test – Federal **VS**

Drug Test – State

Drug Treatment

Fighting/Threats **JT**

Gross Misconduct

Harassment

Insubordination

Language/Verbal Abuse

License Revocation

Medical

Off-Duty Conduct

Requalification **LD**

Safety Rule

Sleeping on the Job

Suspension

Theft/Misappropriation

Union Activity

Work Performance/Trial Period

Employment

Evidence **NO**

General

Burden of Proof

Credibility

Hearsay

Polygraph

Privilege

Self-Incrimination

Federal **JE**

UCFE

UCX

Filing **SA**

Protests

Timeliness

Judicial Ethics **BH**

General

Ex Parte Communication

Recusal

Labor **NO**

Labor Disputes

Union/Collective Bargaining

Layoff **BS**

Miscellaneous

Monetary Eligibility **MM**

Dependents, High Qtr., 2d Benefit Yr

Orders **MM**

Overpayment/Payment **SW**

Benefit Deductions

Overpay – Double Affirmance

Overpay – Equitable Estoppel

Overpay – Waiver/Penalty

Retirement **NO**

Severance/Vacation/PTO

Procedure **JE**

Continuance/Postponement

Discovery

Due Process

Estoppel

Hearings

General

Opening Statement

Representation

Witnesses, Interpreters

Remands **BH**

Res Judicata

Statutory Construction

Withdrawal

Protective Orders **SW**

Requalification/Back Pay **BH**

Tax – E Contributions, Charges, **SA**

& Reimbursements

Income Tax Offset

Independent Kor/Employee

Successorship

Voluntary Quit (Disqualification) **TN**

General/Other

Abandonment

Change K of Hire

Disparate Treatment

Emergency

Forced Resignation

In Lieu of Discharge **DL**

Intolerable/Detrimental

Harassment

Medical

Work related

Non-work related **RS**

Pregnancy

FMLA

Other Employment

Part-Time/Supplemental **DL**

Resignation & Acceptance **RS**

Spouse

Temporary Employment

Working Conditions

Wages **TH**

Workers' Compensation **MM**

Work Refusal (Disqualification) **TN**

Message: FW: Reference manual

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:27 PM
Item ID: 40861731
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **FW: Reference manual**

From Lewis, Devon [IWD] **Date** Friday, November 01, 2013 3:02 PM
To Hillary, Teresa [IWD]
Cc

 [====ALJ Desk Manual TABLE OF CONTENTS - Topic Draws====.doc](#) (42 Kb HTML)

fyi

-----Original Message-----

From: Lewis, Devon [IWD]
Sent: Friday, November 01, 2013 3:02 PM
To: Wahlert, Teresa [IWD]
Subject: RE: Reference manual

Here it is. The red ALJ initials (including Nic O) are at the beginning of their topic assignment and cover everything down to the next set of red ALJ initials. I'm feeling noticeably better every day. Have a good weekend.
Dévon

-----Original Message-----

From: Wahlert, Teresa [IWD]
Sent: Friday, November 01, 2013 2:46 PM
To: Lewis, Devon [IWD]
Subject: Reference manual

When you feel better please send me which ALJs have which topics to be developing
- thx

- Teresa Wahlert

ALJ DESK MANUAL – TABLE OF CONTENTS

Able to & Available for Work (Eligibility) **DL**

Failure to Report

LOA

Medical

On-Call Employment

Partial Unemployment

Reasonable Assurance

Reemployment Services

Work Search

Additional Programs **JT**

DAT

DUA

EUCU

TEB

TEUC

TRA

ALR Annotations **LD**

Business Closure **LD**

Charges **DW**

Government contributory

Relief – DAT, EUC, Disaster

Requalification

Rule of two affirmances

Supplemental employment

Sole purpose

Citations

Claim **BS**

Backdate

Cancellation

CWC

Monetary Eligibility

Reemployment Services

Retroactive

Decisions **DW**

Decisions – OTR/Default

Decisions – Writing

Disability/Reasonable Accommodation **DW**

Discharge/Misconduct (Disqualification)**RS**

General/Definition

Absenteeism **VS**

Current Act **RS**

Deferred Judgment/Alford Plea

Dependent Abuse – Adult

Dependent Abuse – Child **RS**

Drug Test – Federal **VS**

Drug Test – State

Drug Treatment

Fighting/Threats **JT**

Gross Misconduct

Harassment

Insubordination

Language/Verbal Abuse

License Revocation

Medical

Off-Duty Conduct

Requalification **LD**

Safety Rule

Sleeping on the Job

Suspension

Theft/Misappropriation

Union Activity

Work Performance/Trial Period

Employment

Evidence **NO**

General

Burden of Proof

Credibility

Hearsay

Polygraph

Privilege

Self-Incrimination

Federal **JE**

UCFE

UCX

Filing **SA**

Protests

Timeliness

Judicial Ethics **BH**

General

Ex Parte Communication

Recusal

Labor **NO**

Labor Disputes

Union/Collective Bargaining

Layoff **BS**

Miscellaneous

Monetary Eligibility **MM**

Dependents, High Qtr., 2d Benefit Yr

Orders **MM**

Overpayment/Payment **SW**

Benefit Deductions

Overpay – Double Affirmance

Overpay – Equitable Estoppel

Overpay – Waiver/Penalty

Retirement **NO**

Severance/Vacation/PTO

Procedure **JE**

Continuance/Postponement

Discovery

Due Process

Estoppel

Hearings

General

Opening Statement

Representation

Witnesses, Interpreters

Remands **BH**

Res Judicata

Statutory Construction

Withdrawal

Protective Orders **SW**

Requalification/Back Pay **BH**

Tax – E Contributions, Charges, **SA**

& Reimbursements

Income Tax Offset

Independent Kor/Employee

Successorship

Voluntary Quit (Disqualification) **TN**

General/Other

Abandonment

Change K of Hire

Disparate Treatment

Emergency

Forced Resignation

In Lieu of Discharge **DL**

Intolerable/Detrimental

Harassment

Medical

Work related

Non-work related **RS**

Pregnancy

FMLA

Other Employment

Part-Time/Supplemental **DL**

Resignation & Acceptance **RS**

Spouse

Temporary Employment

Working Conditions

Wages **TH**

Workers' Compensation **MM**

Work Refusal (Disqualification) **TN**

Message: link to E participation in FF tip sheet

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:27 PM
Item ID: 40861734
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **link to E participation in FF tip sheet**

From Lewis, Devon [IWD] **Date** Monday, November 04, 2013 11:44 AM
To Koonce, Kerry [IWD]
Cc

Kerry,
There is an employer that would like a link to the tip sheet about FF participation. Would you please send me one if it is online?
Thanks much!
Devon

Message: FW: ALJ Desk Manual

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:28 PM
 Item ID: 40861777
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **FW: ALJ Desk Manual**

From Lewis, Devon [IWD] **Date**
Tuesday,
November 19,
2013 8:59 AM

To Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]

Cc

 [ALJ Desk Manual TOPIC PAGE=====docx](#) (22 Kb HTML)  [=====ALJ Desk Manual TABLE OF CONTENTS=====doc](#) (39 Kb HTML)

This is what I sent on 8/7 when the Director made the initial assignment. It includes the topic page, which is found in the R drive within the Desk Manual folder, along with all other desk manual topic pages that have already been started.

From: Lewis, Devon [IWD]
Sent: Wednesday, August 07, 2013 9:42 AM
To: Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]; Lewis, Devon [IWD]
Subject: ALJ Desk Manual

The Director likes the format, content and direction the ALJ Desk Manual is taking but would

like to target completion by the end of the year. That means that there will need to be more involvement from all ALJs. I've attached a copy of the Table of Contents and a blank format sheet. I will put all files on the Q drive. Please volunteer for topics not yet started. VS is working on drug testing. There is a section for Plain Language on each topic. When you have a draft of the topic, please put it on the Q drive and let everyone know so there can be some review, feedback and additions. This is a fluid document so don't worry about saving a partial topic to the Q while you continue to work on it.

Dévon

STATUTE

ADMINISTRATIVE RULE

CASE LAW

PLAIN LANGUAGE

REASONING STATEMENTS

NOTES

ALJ DESK MANUAL – TABLE OF CONTENTS

Able to & Available for Work (Eligibility)

Failure to Report

LOA

Medical

On-Call Employment

Partial Unemployment

Reasonable Assurance

Reemployment Services

Work Search

Additional Programs

DAT

DUA

EUCU

TEB

TEUC

TRA

ALR Annotations

Business Closure

Charges

Government contributory

Relief – DAT, EUC, Disaster

Requalification

Rule of two affirmances

Supplemental employment

Sole purpose

Citations

Claim

Backdate

Cancellation

CWC

Monetary Eligibility

Reemployment Services

Retroactive

Decisions

Decisions – OTR/Default

Decisions – Writing

Disability/Reasonable Accommodation

Discharge/Misconduct (Disqualification)

General/Definition

Absenteeism

Current Act

Deferred Judgment/Alford Plea

Dependent Abuse – Adult

Dependent Abuse – Child

Drug Test – Federal

Drug Test – State

Drug Treatment

Fighting/Threats

Gross Misconduct

Harassment

Insubordination

Language/Verbal Abuse

License Revocation

Medical

Off-Duty Conduct

Requalification

Safety Rule

Sleeping on the Job

Suspension

Theft/Misappropriation

Union Activity

Work Performance/Trial Period

Employment

Evidence

General

Burden of Proof

Credibility

Hearsay

Polygraph

Privilege

Self-Incrimination

Federal

UCFE

UCX

Filing

Protests

Timeliness

Judicial Ethics

General

Ex Parte Communication

Recusal

Labor

Labor Disputes

Union/Collective Bargaining

Layoff

Miscellaneous

Monetary Eligibility

Dependents, High Qtr., 2d Benefit Yr

Orders

Payment Benefit Deductions

Overpay – Double Affirmance

Overpay – Equitable Estoppel

Retirement

Severance

Vacation

Procedure

Discovery

Due Process

Estoppel

Hearings

General

Opening Statement

Representation

Witnesses, Interpreters

Postponement

Remands

Res Judicata

Statutory Construction

Withdrawal

Requalification/Back Pay

Tax – E Contributions, Charges,

& Reimbursements

Income Tax Offset

Independent Kor/Employee

Successorship

Voluntary Quit (Disqualification)

General/Other

Abandonment

Change K of Hire

Disparate Treatment

Emergency

Forced Resignation

In Lieu of Discharge

Intolerable/Detrimental

Harassment

Medical

Work related

Non-work related

Pregnancy

FMLA

Other Employment

Part-Time/Supplemental

Resignation & Acceptance

Spouse

Temporary Employment

Working Conditions

Wages

Workers' Compensation

Work Refusal (Disqualification)

Message: tip sheet links

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:54 PM
Item ID: 40862320
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **tip sheet links**

From Lewis, Devon [IWD] **Date** Monday, March 17, 2014
6:02 PM
To Koonce, Kerry [IWD]; Johnson, Brei
[IWD]
Cc

I am going to give a presentation at ECI on Wednesday and need to include the links to the Appeals' tip sheets we have so far. I cannot seem to find them. Would you please send me a link/links where I can find them? I believe there are three or four so far.
Thanks,
Devon

Message: RE: ECI Meeting Tomorrow**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:54 PM
 Item ID: 40862329
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: ECI Meeting Tomorrow

From Lewis, Devon [IWD] **Date** Tuesday, March 18, 2014 3:23 PM
To Schippers, Denise [IWD]
Cc Wilkinson, Michael [IWD]

 [UI Tip Sheet - Absenteeism.docx](#) (28 Kb HTML)  [UI Tip Sheet - E FF Participation.docx](#) (27 Kb HTML)  [UI Tip Sheet - General Info.docx](#) (29 Kb HTML)  [UI Tip Sheet - Intoxication.docx](#) (27 Kb HTML)  [UI Tip Sheet - Off-duty Conduct.docx](#) (27 Kb HTML)  [UI Tip Sheet - Work Refusal.docx](#) (27 Kb HTML)

I intend to present handouts of these Tip Sheets and the rest will be verbal.

From: Schippers, Denise [IWD]
Sent: Tuesday, March 18, 2014 1:00 PM
To: Lewis, Devon [IWD]
Cc: Wilkinson, Michael [IWD]
Subject: RE: ECI Meeting Tomorrow

Hi Devon,

I've attached a copy of the agenda. Yes, you are on at 12:30pm and the Community College building is located at 855 E. Court Ave.

35 copies should cover it. If you have the copies already, I can include them in the folders and take them over tomorrow.

Denise

From: Lewis, Devon [IWD]
Sent: Tuesday, March 18, 2014 12:10 PM

To: Schippers, Denise [IWD]
Cc: Wilkinson, Michael [IWD]
Subject: RE: ECI Meeting Tomorrow

Thank you, Denise. I have an 11 am hearing so am not sure what time I will get there. What is the address? It starts at 12:30? How many people should I bring copies for?

Devon

From: Schippers, Denise [IWD]
Sent: Tuesday, March 18, 2014 11:24 AM
To: Wilkinson, Michael [IWD]; Lewis, Devon [IWD]
Subject: ECI Meeting Tomorrow

Mike and Devon,

Please be sure to join us for lunch tomorrow.

Denise Schippers
Business Services Manager | Foreign Labor Certification | OFCCP
Iowa Workforce Development | Workforce Services Division
1000 East Grand Avenue – 1st floor West
Des Moines, IA 50319
Phone: 515-281-7538
Cell: 515-360-9542
Fax: 515-725-2999

IWD Tip Sheet

Unemployment Insurance Benefits: **Absenteeism and Misconduct**

The employer has the burden to prove misconduct in order to deny unemployment insurance benefits. Absenteeism that is both unexcused and excessive is a form of misconduct. Absenteeism includes tardiness and leaving early from scheduled work hours and extending scheduled breaks. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work.

Absenteeism Policy

It is helpful for an employer to have a policy or work rules about attendance to give to employees. Get a signed receipt or acknowledgement for the policy. Include information about reporting an absence. The employee should be made aware in the employer's policy or work rules how to proceed with the following during their absence:

- To whom they must report the absence (supervisor, receptionist, coworker, etc.)
- How they should report the absence (direct conversation, voicemail message, email, text message, etc.)
- Time they should report their absence (minimum number of minutes before the shift start time, no later than the shift start, within a certain time after the shift start time, etc.)

Absences must be properly reported in order to be excused due to the reason for the absence. A fact-finder or administrative law judge (ALJ) may disregard unreasonable policies or work rules.

Excused and Unexcused Absences

Absences related to personal responsibility such as transportation, lack of childcare, and oversleeping are not excused. Failure to find a shift replacement worker does not necessarily make the absence unexcused. Properly reported absences due to illness or injury are excused, regardless of a no-fault or point attendance policy. If there is a pattern of absences or multiple day absences related to illness or injury, an employer may request medical documentation, such as an excuse and release to work. A good faith inability to find childcare for a sick child or family emergency may be excused. A third unexcused absence within a year after a warning will usually be considered excessive. Absences more than one year prior to the separation date may be too old to be considered in the

excessive absenteeism analysis. The last absence must be for an unexcused reason in order to deny benefits. A final excused absence, even with previous multiple unexcused absences, will result in benefit allowance.

Attendance Records and Warnings

Deciding if unexcused absenteeism is also excessive requires review of past absenteeism and warnings. Written records of attendance violations and warnings may be used in a fact-finding interview or appeal hearing to help prove misconduct. Keep track of the date of the absence, appropriate time records for tardiness or leaving early, and the reason for the absence. If an employee violates the attendance policy more than once or twice, consider giving an initial verbal, but documented, warning. Then graduate to a written warning with clearly stated consequences for any further violations, including possible suspension or termination from employment. Sign and date the warning on the day it is given. Have the employee sign and date for the receipt of the warning and allow a space for employee comments, if they want to provide any. They do not have to agree with the warning, but should acknowledge receipt. Give a copy of signed warnings to the employee so they have specific notice that their attendance must improve in order to keep the job. Warnings about other issues, such as job performance, will not count as a warning towards a discharge for absenteeism, and vice versa. Follow the policy or work rules and progressive discipline the same for each employee.

Last Straw

Employers must take prompt action when an employee is discharged after a final instance of absenteeism. The Iowa Court of Appeals has suggested that an employee should not be allowed to continue working for more than ten work days after the last absence or act of misconduct, or the final incident or absence will be stale, the discharge will not be for a "current act" of misconduct, and benefits will be allowed.

No-call/No-show Absences as Quitting

If a worker fails to report for work or notify the employer of absences for *three consecutive* workdays in violation of a *specific employer policy*, the employee will be considered to have voluntarily quit the employment without good cause attributable to the employer and benefits will be denied.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-absenteeism-and-misconduct>

IWD Tip Sheet

Unemployment Insurance Benefits: **Employer Participation at Fact-finding Interview**

Effective July 1, 2013, an employer's account may be charged for failure to participate at a fact-finding interview even if the employer prevails on the appeal in the unemployment insurance hearing. See Iowa Code § 96.3(7)b.

Personal participation by an employer representative with *first-hand* knowledge will usually suffice to prevent charges to the employer's account.

Participation by documentation is also allowed. The employer must submit factual and *detailed* information that, if unrefuted, would be sufficient to allow the employer to win. See Iowa Admin. Code r. 871-24.10(1).

Mandatory requirements when participating via documents:

- Employer must provide the name and telephone number of a representative with first-hand information who is available to be contacted at the time of the fact-finding interview.
- Employer must provide detailed written statements giving dates and specific circumstances of the discharge incident or reasons for a quit.
- The specific rule or policy relied upon must be submitted for a discharge case.
- For an absenteeism discharge the statement must include circumstances of all absences relating to the discharge with proof that the absences are unexcused under Iowa law.

The following are *inadequate* participation for a fact-finding interview:

- Written or oral statements and/or general conclusions without supported factual and detailed information
- Information submitted after a fact-finding interview has concluded

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-employer-fact-finding-interview>

IWD Tip Sheet

Unemployment Insurance Benefits: **General Information**

Discharge

The general rule is that an individual is disqualified for unemployment insurance benefits if discharged for misconduct in connection with the individual's employment. Misconduct is found in deliberate acts or omissions that constitute a material breach of the workers duty to the employer or in repeated acts of carelessness or negligence. Poor performance due to inability and good faith mistakes are not considered misconduct.

The employer has the burden of proof to establish misconduct. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a "current act" of misconduct. Information acquired after the discharge will not be considered, because as a general rule, it could not have been the basis for the decision to discharge.

Although the definition of misconduct excludes "good faith errors in judgment or discretion," a worker's subjective understanding and intent is not the end of the analysis. The key question is what a reasonable person would have believed under the circumstances.

Quit

Claimants who voluntarily leave employment without good cause attributable to the employer are disqualified for benefits. Claimants have the burden of proof in cases involving quits. In general, a voluntary quit requires evidence of an intention to sever the employment relationship (e.g. letter of resignation, verbal resignation).

The District Court has ruled in the past a claimant with limited English skills did not leave work voluntarily when he mistakenly believed he had been discharged.

Prior notification to the employer before resigning for *medical reasons* is required. The evidence must show before resigning the worker:

- Put the employer on notice of the condition
- Warned the employer that he/she may quit if the situation is not addressed
- Gave the employer reasonable opportunity to address legitimate grievances

Prior notification to the employer before resigning for *other reasons* is not

required, but must still be for a good cause reason attributable to the employer.

Procedural Issues

Unemployment insurance hearings before an administrative law judge from Iowa Workforce Development or the Department of Inspections and Appeals are contested cases proceedings pursuant to Chapter 17A. The rules of evidence are found in section 17A.14(1).

Irrelevant, immaterial or unduly repetitious evidence “should” be excluded. There is no residuum rule. All evidence may be hearsay. Even though admissible, hearsay is often NOT the best evidence (if possible witnesses that have first-hand information should participate in the hearings). In evaluating hearsay, the administrative law judge will conduct a common sense evaluation of:

- the nature of the hearsay,
- the availability of better evidence,
- the cost of acquiring better evidence,
- the need for precision, and
- the administrative policy to be fulfilled.

An amendment to section 17A.10 provides that contested cases in which the agency is a named party or real party in interest shall be heard by an administrative law judge from the Department of Inspections and Appeals (DIA). Iowa Workforce Development adopted a regulation whereby it transfers to the DIA those cases in which it is the employer and those cases in which a subdivision of the agency desires to participate in the contested case hearing.

For additional information, please reference the Iowa Admin. Code r. 871-26 for IWD’s rules of procedure for contested cases.

Timeliness of Protest or Appeal

Iowa Code 96.6(2) allows ten days for filing an initial protests and appeals from first level fact finding determinations.

The Code of Iowa gives an automatic extension until the next regular business day if the last day for filing an appeal fall on a Saturday, Sunday, or other legal holiday.

The time limits do not apply if the party does not receive the Notice of Claim or fact-finding decision in time to file a timely protest or appeal (the question becomes whether the party filed within a reasonable amount of time after learning of the Notice of Claim or fact finding decision).

If filed by mail, an appeal must be postmarked by the final day.

If filed by any other means besides mail, the agency must receive it by the end of the final day.

The statute gives 30 days to appeal the Employer's Statement of Charges or, in the case of a reimbursable employer, a billing statement (this applies if the employer did not receive a Notice of Claim).

The Supreme Court of Iowa has ruled that the time limit for filing appeals is jurisdictional (*Franklin v. Iowa Dep't of Job Serv.*, 277 N.W. 2d 877, 881 (Iowa 1979) meaning that in the absence of a timely protest or timely appeal, the agency does not have jurisdiction to rule on the merits of the case.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-general-fact-finding-information>

IWD Tip Sheet

Unemployment Insurance Benefits: **Intoxication at Work**

An employer may always terminate an employee for being “impaired on the job”. Based on the credibility and quality of the evidence, the employer may establish a claimant committed work-connected misconduct.

The employer should question the employee about what led to that condition. This questioning is conducted immediately with a witness and documented. Local law enforcement may be of assistance with a specific line of questioning.

Allowing the employee to remain on the job in an impaired state may result in a conclusion of no misconduct.

If an employee is suspected of using drugs or alcohol, but does not appear to be impaired, a judge may look to the employer’s **work rules**. If an employer has work rules which forbid using drugs or alcohol before or during work and that rule is violated, misconduct may be found. An employer will be asked to provide evidence of the employee’s knowledge of the work rule either through signed work rules or prior warning.

Example: Employer X has a rule against using alcohol 8 hours before coming to work or during work hours. Worker Y has an alcoholic beverage at lunch. Worker Y is not “impaired” by any normal meaning of the word. However, since employer X has a policy (that Worker Y is aware of and Employer X consistently enforces), Worker Y may have committed misconduct by violating a known work rule. If Employer X has no work rule, then Worker Y’s conduct is probably not misconduct under Iowa law absent a prior warning.

Proof is the key variable. **Hearsay** from a second-hand source may *not* establish work-connected misconduct in an appeal hearing.

Example: A supervisor’s hearsay testimony that co-workers observed a claimant impaired at work will rarely hold up in an administrative hearing. The supervisor should have first-hand observations or have this witness testify at the hearing. The witness should testify about what was seen, heard, smelled, rather than give a general conclusion statement that the worker was impaired. (Hearsay information includes all out of court witness statements and reports. Hearsay information will normally be admitted at an administrative hearing, but the credibility or reliability of that information may be questionable. Some sources of hearsay information are given more weight than other sources. Witness testimony

should include what was seen (condition of eyes, facial complexion, behavior, balance, etc.), heard (speech pattern, admissions, etc.) or smelled (type of odor, location of odor, etc.).

A private employer can choose to perform **drug and alcohol testing** pursuant to **Iowa Code § 730.5**. Positive drug tests under chapter 730.5 may prove misconduct. An employer should seek legal counsel to ensure compliance with the procedural requirements of this law. Failure to comply with any provisions of chapter 730.5 will usually result in a finding of no misconduct. However, a drug or alcohol test is not required if the employer has sufficient proof of the impairment. Proof may include firsthand observations by a credible witness:

- smelled like alcohol
- staggering
- slurred speech

If the witness is not available for the hearing, a signed document from the witness with a full account of what they observed is helpful. However, if the worker denies the allegation, a signed statement from a witness who is not at the hearing to testify is usually given less consideration.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-intoxication-work>

IWD Tip Sheet

Unemployment Insurance Benefits: **Off-duty Conduct**

Misconduct resulting in a denial of unemployment insurance benefits must be an act of any of the following:

- malicious or willful disregard of the employer's interest
- deliberate violation of the employer's rules
- disregard of standards of behavior which the employer has the right to expect of its employee
- negligence manifesting wrongful intent
- show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer

It has been recognized that an employee continues in **off-duty hours** to:

- regard the employer's interests
- observe the rules laid down by the employer in connection with the proper conduct of business
- honor the standards of behavior which the employer has a right to expect of an employee

If the violation of any of these requisites during the employee's off-duty hours leads to discharge, unemployment benefits may be denied for misconduct connected with the work. For off-duty conduct to be **grounds for disqualification** of unemployment benefits the conduct must be work related or the conduct must have direct, negative effect on the employer. Violation of a reasonable employer rule that is work related (such as a rule prohibiting illegal, immoral or indecent conduct) will constitute misconduct.

The Iowa courts have found the following circumstances to be off duty misconduct:

- truck driver was discharged for misconduct due to repeated off duty traffic violations that made him uninsurable, and thus unemployable
- claimant was disqualified from unemployment insurance benefits as a result of being convicted of selling cocaine off duty at home (the court ruled the claimant violated the employer's work rule prohibiting immoral or illegal conduct, and the claimant's act of selling cocaine in the face of that rule constituted misconduct)

Establishing Off-duty Conduct

Have a written policy outlining expected behaviors, and disciplinary action that could result from a violation of work rules, up to and including, discharge for a single act.

Have a work rule prohibiting illegal, immoral or indecent conduct, and loss of trust of management or board of directors (the work rule may include conduct subjecting the employer to public humiliation, scorn, or damage to reputation).

Have the work rules reviewed and signed by each employee (this is best accomplished by having the employee sign and date the work rules acknowledging that they have read, understand and are responsible for its contents). Anytime the work rules are updated each employee should be review and sign the updated version.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-duty-conduct>

IWD Tip Sheet

Unemployment Insurance Benefits: **Refusal of Work or Recall**

Disqualifying Factors

The general rule is that an individual is disqualified for benefits for refusing a suitable offer of work, refusing a referral by the agency to suitable work or refusing a recall to suitable work.

To qualify as a **suitable offer** there must be a bona fide offer of work for an actual vacancy, specifying such things as duties, rate of pay, days and hours of work, etc. In addition, the offer must be made by personal contact and preferably in writing, (a registered letter constitutes personal contact only for recall to work). Both the offer and the refusal must occur during the unemployment insurance claimant's benefit year for the agency to have jurisdiction to determine if the refusal was a disqualifying event. An individual who willfully discourages a prospective employer from making a suitable work offer will also be disqualified for benefits.

Determining "Suitability"

Part 1: **Wage Suitability** is a percentage of the claimant's average weekly wage declining over the duration of the unemployment insurance claim:

- 100% of the average weekly wage in the base period if work is offered in the first five (5) weeks of claiming unemployment insurance.
- 75% if offered in the 6th through 12th weeks of unemployment.
- 70% if offered in the 13th through 18th weeks of unemployment.
- 65% if offered after the 18th week.

Part 2: **Job Suitability** includes the following factors:

- Prior training and experience
- Individual's physical fitness
- Degree of risk to health, safety, and morals
- Prospects of finding employment in claimant's normal occupation
- Commuting distance
- Other "reasonable" factors

Exceptions

An individual will not be disqualified for unemployment insurance benefits for the

following:

- refusing a job offer that pays less than the federal minimum wage
- refusal to fill a vacancy caused by a strike or lockout
- refusing a job offer where the pay, hours and/or conditions are “substantially less favorable” than similar work in the area
- refusal of work requiring union membership, resignation from union membership or a promise to refrain from union membership

An offer of temporary work will not always disqualify if the unemployment insurance claim is based on wages earned in full-time or part-time permanent employment.

Reporting Refusal of Work

There are two ways to report a refusal of work.

- <http://www.iowaworkforce.org/ui/forms/jobdecline.asp>
- 1-866-239-0843

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-refusal-work-or-recall>

Message: tip sheets

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:56 PM
Item ID: 40862374
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **tip sheets**

From Lewis, Devon [IWD] **Date** Thursday, March 20, 2014 8:45 AM
To Schippers, Denise [IWD]
Cc

 [UI Tip Sheet - Absenteeism.docx](#) (28 Kb HTML)  [UI Tip Sheet - E FF Participation.docx](#) (27 Kb HTML)  [UI Tip Sheet - General Info.docx](#) (29 Kb HTML)  [UI Tip Sheet - Intoxication.docx](#) (27 Kb HTML)  [UI Tip Sheet - Off-duty Conduct.docx](#) (27 Kb HTML)  [UI Tip Sheet - Work Refusal.docx](#) (27 Kb HTML)

Thanks,
Devon

IWD Tip Sheet

Unemployment Insurance Benefits: **Absenteeism and Misconduct**

The employer has the burden to prove misconduct in order to deny unemployment insurance benefits. Absenteeism that is both unexcused and excessive is a form of misconduct. Absenteeism includes tardiness and leaving early from scheduled work hours and extending scheduled breaks. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work.

Absenteeism Policy

It is helpful for an employer to have a policy or work rules about attendance to give to employees. Get a signed receipt or acknowledgement for the policy. Include information about reporting an absence. The employee should be made aware in the employer's policy or work rules how to proceed with the following during their absence:

- To whom they must report the absence (supervisor, receptionist, coworker, etc.)
- How they should report the absence (direct conversation, voicemail message, email, text message, etc.)
- Time they should report their absence (minimum number of minutes before the shift start time, no later than the shift start, within a certain time after the shift start time, etc.)

Absences must be properly reported in order to be excused due to the reason for the absence. A fact-finder or administrative law judge (ALJ) may disregard unreasonable policies or work rules.

Excused and Unexcused Absences

Absences related to personal responsibility such as transportation, lack of childcare, and oversleeping are not excused. Failure to find a shift replacement worker does not necessarily make the absence unexcused. Properly reported absences due to illness or injury are excused, regardless of a no-fault or point attendance policy. If there is a pattern of absences or multiple day absences related to illness or injury, an employer may request medical documentation, such as an excuse and release to work. A good faith inability to find childcare for a sick child or family emergency may be excused. A third unexcused absence within a year after a warning will usually be considered excessive. Absences more than one year prior to the separation date may be too old to be considered in the

excessive absenteeism analysis. The last absence must be for an unexcused reason in order to deny benefits. A final excused absence, even with previous multiple unexcused absences, will result in benefit allowance.

Attendance Records and Warnings

Deciding if unexcused absenteeism is also excessive requires review of past absenteeism and warnings. Written records of attendance violations and warnings may be used in a fact-finding interview or appeal hearing to help prove misconduct. Keep track of the date of the absence, appropriate time records for tardiness or leaving early, and the reason for the absence. If an employee violates the attendance policy more than once or twice, consider giving an initial verbal, but documented, warning. Then graduate to a written warning with clearly stated consequences for any further violations, including possible suspension or termination from employment. Sign and date the warning on the day it is given. Have the employee sign and date for the receipt of the warning and allow a space for employee comments, if they want to provide any. They do not have to agree with the warning, but should acknowledge receipt. Give a copy of signed warnings to the employee so they have specific notice that their attendance must improve in order to keep the job. Warnings about other issues, such as job performance, will not count as a warning towards a discharge for absenteeism, and vice versa. Follow the policy or work rules and progressive discipline the same for each employee.

Last Straw

Employers must take prompt action when an employee is discharged after a final instance of absenteeism. The Iowa Court of Appeals has suggested that an employee should not be allowed to continue working for more than ten work days after the last absence or act of misconduct, or the final incident or absence will be stale, the discharge will not be for a "current act" of misconduct, and benefits will be allowed.

No-call/No-show Absences as Quitting

If a worker fails to report for work or notify the employer of absences for *three consecutive* workdays in violation of a *specific employer policy*, the employee will be considered to have voluntarily quit the employment without good cause attributable to the employer and benefits will be denied.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-absenteeism-and-misconduct>

IWD Tip Sheet

Unemployment Insurance Benefits: **Employer Participation at Fact-finding Interview**

Effective July 1, 2013, an employer's account may be charged for failure to participate at a fact-finding interview even if the employer prevails on the appeal in the unemployment insurance hearing. See Iowa Code § 96.3(7)b.

Personal participation by an employer representative with *first-hand* knowledge will usually suffice to prevent charges to the employer's account.

Participation by documentation is also allowed. The employer must submit factual and *detailed* information that, if unrefuted, would be sufficient to allow the employer to win. See Iowa Admin. Code r. 871-24.10(1).

Mandatory requirements when participating via documents:

- Employer must provide the name and telephone number of a representative with first-hand information who is available to be contacted at the time of the fact-finding interview.
- Employer must provide detailed written statements giving dates and specific circumstances of the discharge incident or reasons for a quit.
- The specific rule or policy relied upon must be submitted for a discharge case.
- For an absenteeism discharge the statement must include circumstances of all absences relating to the discharge with proof that the absences are unexcused under Iowa law.

The following are *inadequate* participation for a fact-finding interview:

- Written or oral statements and/or general conclusions without supported factual and detailed information
- Information submitted after a fact-finding interview has concluded

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-employer-fact-finding-interview>

IWD Tip Sheet

Unemployment Insurance Benefits: **General Information**

Discharge

The general rule is that an individual is disqualified for unemployment insurance benefits if discharged for misconduct in connection with the individual's employment. Misconduct is found in deliberate acts or omissions that constitute a material breach of the workers duty to the employer or in repeated acts of carelessness or negligence. Poor performance due to inability and good faith mistakes are not considered misconduct.

The employer has the burden of proof to establish misconduct. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a "current act" of misconduct. Information acquired after the discharge will not be considered, because as a general rule, it could not have been the basis for the decision to discharge.

Although the definition of misconduct excludes "good faith errors in judgment or discretion," a worker's subjective understanding and intent is not the end of the analysis. The key question is what a reasonable person would have believed under the circumstances.

Quit

Claimants who voluntarily leave employment without good cause attributable to the employer are disqualified for benefits. Claimants have the burden of proof in cases involving quits. In general, a voluntary quit requires evidence of an intention to sever the employment relationship (e.g. letter of resignation, verbal resignation).

The District Court has ruled in the past a claimant with limited English skills did not leave work voluntarily when he mistakenly believed he had been discharged.

Prior notification to the employer before resigning for *medical reasons* is required. The evidence must show before resigning the worker:

- Put the employer on notice of the condition
- Warned the employer that he/she may quit if the situation is not addressed
- Gave the employer reasonable opportunity to address legitimate grievances

Prior notification to the employer before resigning for *other reasons* is not

required, but must still be for a good cause reason attributable to the employer.

Procedural Issues

Unemployment insurance hearings before an administrative law judge from Iowa Workforce Development or the Department of Inspections and Appeals are contested cases proceedings pursuant to Chapter 17A. The rules of evidence are found in section 17A.14(1).

Irrelevant, immaterial or unduly repetitious evidence “should” be excluded. There is no residuum rule. All evidence may be hearsay. Even though admissible, hearsay is often NOT the best evidence (if possible witnesses that have first-hand information should participate in the hearings). In evaluating hearsay, the administrative law judge will conduct a common sense evaluation of:

- the nature of the hearsay,
- the availability of better evidence,
- the cost of acquiring better evidence,
- the need for precision, and
- the administrative policy to be fulfilled.

An amendment to section 17A.10 provides that contested cases in which the agency is a named party or real party in interest shall be heard by an administrative law judge from the Department of Inspections and Appeals (DIA). Iowa Workforce Development adopted a regulation whereby it transfers to the DIA those cases in which it is the employer and those cases in which a subdivision of the agency desires to participate in the contested case hearing.

For additional information, please reference the Iowa Admin. Code r. 871-26 for IWD’s rules of procedure for contested cases.

Timeliness of Protest or Appeal

Iowa Code 96.6(2) allows ten days for filing an initial protests and appeals from first level fact finding determinations.

The Code of Iowa gives an automatic extension until the next regular business day if the last day for filing an appeal fall on a Saturday, Sunday, or other legal holiday.

The time limits do not apply if the party does not receive the Notice of Claim or fact-finding decision in time to file a timely protest or appeal (the question becomes whether the party filed within a reasonable amount of time after learning of the Notice of Claim or fact finding decision).

If filed by mail, an appeal must be postmarked by the final day.

If filed by any other means besides mail, the agency must receive it by the end of the final day.

The statute gives 30 days to appeal the Employer's Statement of Charges or, in the case of a reimbursable employer, a billing statement (this applies if the employer did not receive a Notice of Claim).

The Supreme Court of Iowa has ruled that the time limit for filing appeals is jurisdictional (*Franklin v. Iowa Dep't of Job Serv.*, 277 N.W. 2d 877, 881 (Iowa 1979) meaning that in the absence of a timely protest or timely appeal, the agency does not have jurisdiction to rule on the merits of the case.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-general-fact-finding-information>

IWD Tip Sheet

Unemployment Insurance Benefits: **Intoxication at Work**

An employer may always terminate an employee for being “impaired on the job”. Based on the credibility and quality of the evidence, the employer may establish a claimant committed work-connected misconduct.

The employer should question the employee about what led to that condition. This questioning is conducted immediately with a witness and documented. Local law enforcement may be of assistance with a specific line of questioning.

Allowing the employee to remain on the job in an impaired state may result in a conclusion of no misconduct.

If an employee is suspected of using drugs or alcohol, but does not appear to be impaired, a judge may look to the employer’s **work rules**. If an employer has work rules which forbid using drugs or alcohol before or during work and that rule is violated, misconduct may be found. An employer will be asked to provide evidence of the employee’s knowledge of the work rule either through signed work rules or prior warning.

Example: Employer X has a rule against using alcohol 8 hours before coming to work or during work hours. Worker Y has an alcoholic beverage at lunch. Worker Y is not “impaired” by any normal meaning of the word. However, since employer X has a policy (that Worker Y is aware of and Employer X consistently enforces), Worker Y may have committed misconduct by violating a known work rule. If Employer X has no work rule, then Worker Y’s conduct is probably not misconduct under Iowa law absent a prior warning.

Proof is the key variable. **Hearsay** from a second-hand source may *not* establish work-connected misconduct in an appeal hearing.

Example: A supervisor’s hearsay testimony that co-workers observed a claimant impaired at work will rarely hold up in an administrative hearing. The supervisor should have first-hand observations or have this witness testify at the hearing. The witness should testify about what was seen, heard, smelled, rather than give a general conclusion statement that the worker was impaired. (Hearsay information includes all out of court witness statements and reports. Hearsay information will normally be admitted at an administrative hearing, but the credibility or reliability of that information may be questionable. Some sources of hearsay information are given more weight than other sources. Witness testimony

should include what was seen (condition of eyes, facial complexion, behavior, balance, etc.), heard (speech pattern, admissions, etc.) or smelled (type of odor, location of odor, etc.).

A private employer can choose to perform **drug and alcohol testing** pursuant to **Iowa Code § 730.5**. Positive drug tests under chapter 730.5 may prove misconduct. An employer should seek legal counsel to ensure compliance with the procedural requirements of this law. Failure to comply with any provisions of chapter 730.5 will usually result in a finding of no misconduct. However, a drug or alcohol test is not required if the employer has sufficient proof of the impairment. Proof may include firsthand observations by a credible witness:

- smelled like alcohol
- staggering
- slurred speech

If the witness is not available for the hearing, a signed document from the witness with a full account of what they observed is helpful. However, if the worker denies the allegation, a signed statement from a witness who is not at the hearing to testify is usually given less consideration.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-intoxication-work>

IWD Tip Sheet

Unemployment Insurance Benefits: **Off-duty Conduct**

Misconduct resulting in a denial of unemployment insurance benefits must be an act of any of the following:

- malicious or willful disregard of the employer's interest
- deliberate violation of the employer's rules
- disregard of standards of behavior which the employer has the right to expect of its employee
- negligence manifesting wrongful intent
- show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer

It has been recognized that an employee continues in **off-duty hours** to:

- regard the employer's interests
- observe the rules laid down by the employer in connection with the proper conduct of business
- honor the standards of behavior which the employer has a right to expect of an employee

If the violation of any of these requisites during the employee's off-duty hours leads to discharge, unemployment benefits may be denied for misconduct connected with the work. For off-duty conduct to be **grounds for disqualification** of unemployment benefits the conduct must be work related or the conduct must have direct, negative effect on the employer. Violation of a reasonable employer rule that is work related (such as a rule prohibiting illegal, immoral or indecent conduct) will constitute misconduct.

The Iowa courts have found the following circumstances to be off duty misconduct:

- truck driver was discharged for misconduct due to repeated off duty traffic violations that made him uninsurable, and thus unemployable
- claimant was disqualified from unemployment insurance benefits as a result of being convicted of selling cocaine off duty at home (the court ruled the claimant violated the employer's work rule prohibiting immoral or illegal conduct, and the claimant's act of selling cocaine in the face of that rule constituted misconduct)

Establishing Off-duty Conduct

Have a written policy outlining expected behaviors, and disciplinary action that could result from a violation of work rules, up to and including, discharge for a single act.

Have a work rule prohibiting illegal, immoral or indecent conduct, and loss of trust of management or board of directors (the work rule may include conduct subjecting the employer to public humiliation, scorn, or damage to reputation).

Have the work rules reviewed and signed by each employee (this is best accomplished by having the employee sign and date the work rules acknowledging that they have read, understand and are responsible for its contents). Anytime the work rules are updated each employee should be review and sign the updated version.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-duty-conduct>

IWD Tip Sheet

Unemployment Insurance Benefits: **Refusal of Work or Recall**

Disqualifying Factors

The general rule is that an individual is disqualified for benefits for refusing a suitable offer of work, refusing a referral by the agency to suitable work or refusing a recall to suitable work.

To qualify as a **suitable offer** there must be a bona fide offer of work for an actual vacancy, specifying such things as duties, rate of pay, days and hours of work, etc. In addition, the offer must be made by personal contact and preferably in writing, (a registered letter constitutes personal contact only for recall to work). Both the offer and the refusal must occur during the unemployment insurance claimant's benefit year for the agency to have jurisdiction to determine if the refusal was a disqualifying event. An individual who willfully discourages a prospective employer from making a suitable work offer will also be disqualified for benefits.

Determining "Suitability"

Part 1: **Wage Suitability** is a percentage of the claimant's average weekly wage declining over the duration of the unemployment insurance claim:

- 100% of the average weekly wage in the base period if work is offered in the first five (5) weeks of claiming unemployment insurance.
- 75% if offered in the 6th through 12th weeks of unemployment.
- 70% if offered in the 13th through 18th weeks of unemployment.
- 65% if offered after the 18th week.

Part 2: **Job Suitability** includes the following factors:

- Prior training and experience
- Individual's physical fitness
- Degree of risk to health, safety, and morals
- Prospects of finding employment in claimant's normal occupation
- Commuting distance
- Other "reasonable" factors

Exceptions

An individual will not be disqualified for unemployment insurance benefits for the

following:

- refusing a job offer that pays less than the federal minimum wage
- refusal to fill a vacancy caused by a strike or lockout
- refusing a job offer where the pay, hours and/or conditions are “substantially less favorable” than similar work in the area
- refusal of work requiring union membership, resignation from union membership or a promise to refrain from union membership

An offer of temporary work will not always disqualify if the unemployment insurance claim is based on wages earned in full-time or part-time permanent employment.

Reporting Refusal of Work

There are two ways to report a refusal of work.

- <http://www.iowaworkforce.org/ui/forms/jobdecline.asp>
- 1-866-239-0843

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-refusal-work-or-recall>

Message: tip sheet edits

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:56 PM
Item ID: 40862376
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **tip sheet edits**

From Lewis, Devon [IWD] **Date** Thursday, March 20, 2014 8:47 AM
To Koonce, Kerry [IWD]
Cc

 [UI Tip Sheet - Absenteeism.docx](#) (28 Kb HTML)  [UI Tip Sheet - E FF Participation.docx](#) (27 Kb HTML)  [UI Tip Sheet - General Info.docx](#) (29 Kb HTML)  [UI Tip Sheet - Intoxication.docx](#) (27 Kb HTML)  [UI Tip Sheet - Off-duty Conduct.docx](#) (27 Kb HTML)  [UI Tip Sheet - Work Refusal.docx](#) (27 Kb HTML)

Kerry,
Here are the edited tip sheets to go on the website. I did not change content, but only cleaned up format, clarity, grammar and punctuation.
Thanks,
Devon

IWD Tip Sheet

Unemployment Insurance Benefits: **Absenteeism and Misconduct**

The employer has the burden to prove misconduct in order to deny unemployment insurance benefits. Absenteeism that is both unexcused and excessive is a form of misconduct. Absenteeism includes tardiness and leaving early from scheduled work hours and extending scheduled breaks. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work.

Absenteeism Policy

It is helpful for an employer to have a policy or work rules about attendance to give to employees. Get a signed receipt or acknowledgement for the policy. Include information about reporting an absence. The employee should be made aware in the employer's policy or work rules how to proceed with the following during their absence:

- To whom they must report the absence (supervisor, receptionist, coworker, etc.)
- How they should report the absence (direct conversation, voicemail message, email, text message, etc.)
- Time they should report their absence (minimum number of minutes before the shift start time, no later than the shift start, within a certain time after the shift start time, etc.)

Absences must be properly reported in order to be excused due to the reason for the absence. A fact-finder or administrative law judge (ALJ) may disregard unreasonable policies or work rules.

Excused and Unexcused Absences

Absences related to personal responsibility such as transportation, lack of childcare, and oversleeping are not excused. Failure to find a shift replacement worker does not necessarily make the absence unexcused. Properly reported absences due to illness or injury are excused, regardless of a no-fault or point attendance policy. If there is a pattern of absences or multiple day absences related to illness or injury, an employer may request medical documentation, such as an excuse and release to work. A good faith inability to find childcare for a sick child or family emergency may be excused. A third unexcused absence within a year after a warning will usually be considered excessive. Absences more than one year prior to the separation date may be too old to be considered in the

excessive absenteeism analysis. The last absence must be for an unexcused reason in order to deny benefits. A final excused absence, even with previous multiple unexcused absences, will result in benefit allowance.

Attendance Records and Warnings

Deciding if unexcused absenteeism is also excessive requires review of past absenteeism and warnings. Written records of attendance violations and warnings may be used in a fact-finding interview or appeal hearing to help prove misconduct. Keep track of the date of the absence, appropriate time records for tardiness or leaving early, and the reason for the absence. If an employee violates the attendance policy more than once or twice, consider giving an initial verbal, but documented, warning. Then graduate to a written warning with clearly stated consequences for any further violations, including possible suspension or termination from employment. Sign and date the warning on the day it is given. Have the employee sign and date for the receipt of the warning and allow a space for employee comments, if they want to provide any. They do not have to agree with the warning, but should acknowledge receipt. Give a copy of signed warnings to the employee so they have specific notice that their attendance must improve in order to keep the job. Warnings about other issues, such as job performance, will not count as a warning towards a discharge for absenteeism, and vice versa. Follow the policy or work rules and progressive discipline the same for each employee.

Last Straw

Employers must take prompt action when an employee is discharged after a final instance of absenteeism. The Iowa Court of Appeals has suggested that an employee should not be allowed to continue working for more than ten work days after the last absence or act of misconduct, or the final incident or absence will be stale, the discharge will not be for a "current act" of misconduct, and benefits will be allowed.

No-call/No-show Absences as Quitting

If a worker fails to report for work or notify the employer of absences for *three consecutive* workdays in violation of a *specific employer policy*, the employee will be considered to have voluntarily quit the employment without good cause attributable to the employer and benefits will be denied.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-absenteeism-and-misconduct>

IWD Tip Sheet

Unemployment Insurance Benefits: **Employer Participation at Fact-finding Interview**

Effective July 1, 2013, an employer's account may be charged for failure to participate at a fact-finding interview even if the employer prevails on the appeal in the unemployment insurance hearing. See Iowa Code § 96.3(7)b.

Personal participation by an employer representative with *first-hand* knowledge will usually suffice to prevent charges to the employer's account.

Participation by documentation is also allowed. The employer must submit factual and *detailed* information that, if unrefuted, would be sufficient to allow the employer to win. See Iowa Admin. Code r. 871-24.10(1).

Mandatory requirements when participating via documents:

- Employer must provide the name and telephone number of a representative with first-hand information who is available to be contacted at the time of the fact-finding interview.
- Employer must provide detailed written statements giving dates and specific circumstances of the discharge incident or reasons for a quit.
- The specific rule or policy relied upon must be submitted for a discharge case.
- For an absenteeism discharge the statement must include circumstances of all absences relating to the discharge with proof that the absences are unexcused under Iowa law.

The following are *inadequate* participation for a fact-finding interview:

- Written or oral statements and/or general conclusions without supported factual and detailed information
- Information submitted after a fact-finding interview has concluded

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-employer-fact-finding-interview>

IWD Tip Sheet

Unemployment Insurance Benefits: **General Information**

Discharge

The general rule is that an individual is disqualified for unemployment insurance benefits if discharged for misconduct in connection with the individual's employment. Misconduct is found in deliberate acts or omissions that constitute a material breach of the workers duty to the employer or in repeated acts of carelessness or negligence. Poor performance due to inability and good faith mistakes are not considered misconduct.

The employer has the burden of proof to establish misconduct. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a "current act" of misconduct. Information acquired after the discharge will not be considered, because as a general rule, it could not have been the basis for the decision to discharge.

Although the definition of misconduct excludes "good faith errors in judgment or discretion," a worker's subjective understanding and intent is not the end of the analysis. The key question is what a reasonable person would have believed under the circumstances.

Quit

Claimants who voluntarily leave employment without good cause attributable to the employer are disqualified for benefits. Claimants have the burden of proof in cases involving quits. In general, a voluntary quit requires evidence of an intention to sever the employment relationship (e.g. letter of resignation, verbal resignation).

The District Court has ruled in the past a claimant with limited English skills did not leave work voluntarily when he mistakenly believed he had been discharged.

Prior notification to the employer before resigning for *medical reasons* is required. The evidence must show before resigning the worker:

- Put the employer on notice of the condition
- Warned the employer that he/she may quit if the situation is not addressed
- Gave the employer reasonable opportunity to address legitimate grievances

Prior notification to the employer before resigning for *other reasons* is not

required, but must still be for a good cause reason attributable to the employer.

Procedural Issues

Unemployment insurance hearings before an administrative law judge from Iowa Workforce Development or the Department of Inspections and Appeals are contested cases proceedings pursuant to Chapter 17A. The rules of evidence are found in section 17A.14(1).

Irrelevant, immaterial or unduly repetitious evidence “should” be excluded. There is no residuum rule. All evidence may be hearsay. Even though admissible, hearsay is often NOT the best evidence (if possible witnesses that have first-hand information should participate in the hearings). In evaluating hearsay, the administrative law judge will conduct a common sense evaluation of:

- the nature of the hearsay,
- the availability of better evidence,
- the cost of acquiring better evidence,
- the need for precision, and
- the administrative policy to be fulfilled.

An amendment to section 17A.10 provides that contested cases in which the agency is a named party or real party in interest shall be heard by an administrative law judge from the Department of Inspections and Appeals (DIA). Iowa Workforce Development adopted a regulation whereby it transfers to the DIA those cases in which it is the employer and those cases in which a subdivision of the agency desires to participate in the contested case hearing.

For additional information, please reference the Iowa Admin. Code r. 871-26 for IWD’s rules of procedure for contested cases.

Timeliness of Protest or Appeal

Iowa Code 96.6(2) allows ten days for filing an initial protests and appeals from first level fact finding determinations.

The Code of Iowa gives an automatic extension until the next regular business day if the last day for filing an appeal fall on a Saturday, Sunday, or other legal holiday.

The time limits do not apply if the party does not receive the Notice of Claim or fact-finding decision in time to file a timely protest or appeal (the question becomes whether the party filed within a reasonable amount of time after learning of the Notice of Claim or fact finding decision).

If filed by mail, an appeal must be postmarked by the final day.

If filed by any other means besides mail, the agency must receive it by the end of the final day.

The statute gives 30 days to appeal the Employer's Statement of Charges or, in the case of a reimbursable employer, a billing statement (this applies if the employer did not receive a Notice of Claim).

The Supreme Court of Iowa has ruled that the time limit for filing appeals is jurisdictional (*Franklin v. Iowa Dep't of Job Serv.*, 277 N.W. 2d 877, 881 (Iowa 1979) meaning that in the absence of a timely protest or timely appeal, the agency does not have jurisdiction to rule on the merits of the case.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-general-fact-finding-information>

IWD Tip Sheet

Unemployment Insurance Benefits: **Intoxication at Work**

An employer may always terminate an employee for being “impaired on the job”. Based on the credibility and quality of the evidence, the employer may establish a claimant committed work-connected misconduct.

The employer should question the employee about what led to that condition. This questioning is conducted immediately with a witness and documented. Local law enforcement may be of assistance with a specific line of questioning.

Allowing the employee to remain on the job in an impaired state may result in a conclusion of no misconduct.

If an employee is suspected of using drugs or alcohol, but does not appear to be impaired, a judge may look to the employer’s **work rules**. If an employer has work rules which forbid using drugs or alcohol before or during work and that rule is violated, misconduct may be found. An employer will be asked to provide evidence of the employee’s knowledge of the work rule either through signed work rules or prior warning.

Example: Employer X has a rule against using alcohol 8 hours before coming to work or during work hours. Worker Y has an alcoholic beverage at lunch. Worker Y is not “impaired” by any normal meaning of the word. However, since employer X has a policy (that Worker Y is aware of and Employer X consistently enforces), Worker Y may have committed misconduct by violating a known work rule. If Employer X has no work rule, then Worker Y’s conduct is probably not misconduct under Iowa law absent a prior warning.

Proof is the key variable. **Hearsay** from a second-hand source may *not* establish work-connected misconduct in an appeal hearing.

Example: A supervisor’s hearsay testimony that co-workers observed a claimant impaired at work will rarely hold up in an administrative hearing. The supervisor should have first-hand observations or have this witness testify at the hearing. The witness should testify about what was seen, heard, smelled, rather than give a general conclusion statement that the worker was impaired. (Hearsay information includes all out of court witness statements and reports. Hearsay information will normally be admitted at an administrative hearing, but the credibility or reliability of that information may be questionable. Some sources of hearsay information are given more weight than other sources. Witness testimony

should include what was seen (condition of eyes, facial complexion, behavior, balance, etc.), heard (speech pattern, admissions, etc.) or smelled (type of odor, location of odor, etc.).

A private employer can choose to perform **drug and alcohol testing** pursuant to **Iowa Code § 730.5**. Positive drug tests under chapter 730.5 may prove misconduct. An employer should seek legal counsel to ensure compliance with the procedural requirements of this law. Failure to comply with any provisions of chapter 730.5 will usually result in a finding of no misconduct. However, a drug or alcohol test is not required if the employer has sufficient proof of the impairment. Proof may include firsthand observations by a credible witness:

- smelled like alcohol
- staggering
- slurred speech

If the witness is not available for the hearing, a signed document from the witness with a full account of what they observed is helpful. However, if the worker denies the allegation, a signed statement from a witness who is not at the hearing to testify is usually given less consideration.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-intoxication-work>

IWD Tip Sheet

Unemployment Insurance Benefits: **Off-duty Conduct**

Misconduct resulting in a denial of unemployment insurance benefits must be an act of any of the following:

- malicious or willful disregard of the employer's interest
- deliberate violation of the employer's rules
- disregard of standards of behavior which the employer has the right to expect of its employee
- negligence manifesting wrongful intent
- show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer

It has been recognized that an employee continues in **off-duty hours** to:

- regard the employer's interests
- observe the rules laid down by the employer in connection with the proper conduct of business
- honor the standards of behavior which the employer has a right to expect of an employee

If the violation of any of these requisites during the employee's off-duty hours leads to discharge, unemployment benefits may be denied for misconduct connected with the work. For off-duty conduct to be **grounds for disqualification** of unemployment benefits the conduct must be work related or the conduct must have direct, negative effect on the employer. Violation of a reasonable employer rule that is work related (such as a rule prohibiting illegal, immoral or indecent conduct) will constitute misconduct.

The Iowa courts have found the following circumstances to be off duty misconduct:

- truck driver was discharged for misconduct due to repeated off duty traffic violations that made him uninsurable, and thus unemployable
- claimant was disqualified from unemployment insurance benefits as a result of being convicted of selling cocaine off duty at home (the court ruled the claimant violated the employer's work rule prohibiting immoral or illegal conduct, and the claimant's act of selling cocaine in the face of that rule constituted misconduct)

Establishing Off-duty Conduct

Have a written policy outlining expected behaviors, and disciplinary action that could result from a violation of work rules, up to and including, discharge for a single act.

Have a work rule prohibiting illegal, immoral or indecent conduct, and loss of trust of management or board of directors (the work rule may include conduct subjecting the employer to public humiliation, scorn, or damage to reputation).

Have the work rules reviewed and signed by each employee (this is best accomplished by having the employee sign and date the work rules acknowledging that they have read, understand and are responsible for its contents). Anytime the work rules are updated each employee should be review and sign the updated version.

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-duty-conduct>

IWD Tip Sheet

Unemployment Insurance Benefits: **Refusal of Work or Recall**

Disqualifying Factors

The general rule is that an individual is disqualified for benefits for refusing a suitable offer of work, refusing a referral by the agency to suitable work or refusing a recall to suitable work.

To qualify as a **suitable offer** there must be a bona fide offer of work for an actual vacancy, specifying such things as duties, rate of pay, days and hours of work, etc. In addition, the offer must be made by personal contact and preferably in writing, (a registered letter constitutes personal contact only for recall to work). Both the offer and the refusal must occur during the unemployment insurance claimant's benefit year for the agency to have jurisdiction to determine if the refusal was a disqualifying event. An individual who willfully discourages a prospective employer from making a suitable work offer will also be disqualified for benefits.

Determining "Suitability"

Part 1: **Wage Suitability** is a percentage of the claimant's average weekly wage declining over the duration of the unemployment insurance claim:

- 100% of the average weekly wage in the base period if work is offered in the first five (5) weeks of claiming unemployment insurance.
- 75% if offered in the 6th through 12th weeks of unemployment.
- 70% if offered in the 13th through 18th weeks of unemployment.
- 65% if offered after the 18th week.

Part 2: **Job Suitability** includes the following factors:

- Prior training and experience
- Individual's physical fitness
- Degree of risk to health, safety, and morals
- Prospects of finding employment in claimant's normal occupation
- Commuting distance
- Other "reasonable" factors

Exceptions

An individual will not be disqualified for unemployment insurance benefits for the

following:

- refusing a job offer that pays less than the federal minimum wage
- refusal to fill a vacancy caused by a strike or lockout
- refusing a job offer where the pay, hours and/or conditions are “substantially less favorable” than similar work in the area
- refusal of work requiring union membership, resignation from union membership or a promise to refrain from union membership

An offer of temporary work will not always disqualify if the unemployment insurance claim is based on wages earned in full-time or part-time permanent employment.

Reporting Refusal of Work

There are two ways to report a refusal of work.

- <http://www.iowaworkforce.org/ui/forms/jobdecline.asp>
- 1-866-239-0843

Note: The above is legal information, it is not legal advice.

<http://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-tip-sheet-refusal-work-or-recall>

Message: FW: New OP language**Case Information:**

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:58 PM
Item ID: 40862450
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: New OP language

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:04 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

[OP changes.doc](#) (36 Kb HTML)

This is the first – pre 7/15/13 – looking for more since then. This whole discussion should have been initiated by the CALJ much earlier than June for the July 1 effective date.

From: Donner, Lynette [IWD]
Sent: Wednesday, June 26, 2013 11:28 AM
To: Walsh, Joseph [IWD]; Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Hillary, Teresa [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Seeck, Vicki [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Wise, Steve [IWD]
Subject: New OP language

Attached is the consensus language on the new OP language for hearing notice issues and for decisions.

The assumption is that support staff is going to automatically be pulling and sending out the f/f documentation to the parties on the ER separation appeals so that we can make a ruling on the “participation” issue. I personally would prefer if the staff could put a page numbering, such as circled page numbering, on each of the pages for easy reference as necessary during the hearing.

ER APPEAL OF NON-SEPARATION ISSUES WHICH COULD RESULT IN DISQUALIFICATION CAUSING AN OVERPAYMENT:

Hearing notice/APLA issue code 07: Whether the claimant is overpaid.

REFERENCE CODE 41 (as modified):

Iowa Code section 96.3-7-a provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Or, paraphrased without block text:

Because the claimant was not eligible to receive unemployment insurance benefits because he/she [refused a suitable offer of work without good cause/was not able and available for work], benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. Iowa Code § 96.3-7-a.

ER APPEAL OF SEPARATION:

Hearing notice/APLA issue code 07: Whether the claimant is overpaid.

PLUS: Hearing notice/APLA issue code F/F: Whether the employer's account can be relieved of charge and whether an overpayment is subject to recovery, based upon whether the employer participated in the separation fact-finding.

REFERENCE CODE 41A (as modified):

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Or, paraphrased without block text:

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding regarding the separation which resulted in the preliminary award of benefits. If recovery of an overpayment from a claimant is not required because the employer did not participate in the initial proceeding that resulted in an award of benefits, the employer will be subject to charge for the overpaid benefits. Iowa Code § 96.3-7.

Message: FW: new 41A or boilerplate paragraph?**Case Information:**

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:58 PM
Item ID: 40862451
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: new 41A or boilerplate paragraph?

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:05 PM
To Koonce, Kerry [IWD]
Cc

Re Lack of CALJ communication with WP.

From: Scott, Cheryl [IWD]
Sent: Tuesday, July 02, 2013 9:32 AM
To: Lewis, Devon [IWD]
Cc: Shroyer, Paula [IWD]
Subject: RE: new 41A or boilerplate paragraph?

Thank you.

From: Lewis, Devon [IWD]
Sent: Tuesday, July 02, 2013 9:18 AM
To: Scott, Cheryl [IWD]
Cc: Shroyer, Paula [IWD]
Subject: RE: new 41A or boilerplate paragraph?

There is a new part to the overpayment statute that went into effect on July 1 that applies to certain appeals from FF interviews held on July 1 or later. Those have not reached us yet so it but you might want to double check with Joe to see if the OPay committee has completed the language yet so they can share it with you to make a reference code blurb and have it ready to go when those do start showing up. Sorry weren't aware of this.

From: Scott, Cheryl [IWD]
Sent: Tuesday, July 02, 2013 7:13 AM
To: Lewis, Devon [IWD]
Cc: Shroyer, Paula [IWD]
Subject: new 41A or boilerplate paragraph?

Devon,

I just typed a decision for Terry Nice. At the point of 41A inclusion, he said to use 41A, we may have a new one, or boilerplate.

Something new going on we should be aware of and doing now – or is it coming down the pike?

Just want to get these in and right!

Thanks

Message: FW: OP/waiver/penalty**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862452
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: OP/waiver/penalty

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:06 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

[OP changes.doc](#) (38 Kb HTML)

First post 7/15/13

From: Donner, Lynette [IWD]
Sent: Tuesday, July 16, 2013 2:40 PM
To: Lewis, Devon [IWD]
Cc: Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Scheetz, Beth [IWD]; Wise, Steve [IWD]
Subject: RE: OP/waiver/penalty

I was working with Marlon, Beth, and I consulted w/ Steve as well.

My starting point was the statute. My first concern was the incongruity of the language:

As amended by Senate File 110, revised Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the :
 (b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individ:
 (2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates

I highlighted my area of concern, which is the lack of symmetry between the language where an employer's account is not going to be relieved of charge, compared to where the claimant's overpayment is not going to be recovered. When the language was added in 2008 that the overpayment would not be recovered where the employer failed to participate, it was determined to be clear that this only applied to reversals on separation issues, and the "non-recovery" of the overpayment would not be available for a reversal on, say, a work refusal or able and available issue. The new language, however, does not appear to be solely in the context of a separation. There could be many situations where "benefits are paid" "because" the employer "failed to respond timely or adequately." This seeming could apply to all variety of potential overpayment situations, refusals, able and available, vacation pay, severance pay, etc. More importantly, this does not appear to even be limited to whether or not the "employer did not participate in the initial determination." So I don't know that we can say that the statute is only saying that if an employer does not participate in the fact-finding interview on a separation and an allowance is subsequently reversed on appeal, the overpayment will not be recovered and the employer's account will still be charged. My concern is that it goes beyond that. The source of the odd-fitting language is apparently from the federal statute itself.

One of the precepts of statutory interpretation is that if the same language is used, the same meaning was intended, and conversely, if different language is used, a different meaning was intended. Last I knew, there was still some on-going questions to Agency legal counsel on the question of whether the federal language anticipated that there would be an initial determination made on the participation issue before the appeal level.

Attached is the current version of proposed language following the last staff meeting.

From: Lewis, Devon [IWD]
Sent: Tuesday, July 16, 2013 7:30 AM
To: Donner, Lynette [IWD]
Cc: Hillary, Teresa [IWD]
Subject: OP/waiver/penalty

Lynette,

I'm not sure who else has been working on this topic with you but we need to be ready to go for the staff meeting on Thursday since these appeals will start showing up soon if they have not already. We also need to be ready to work with Claims about their role and inform/train DIA ALJs about this. Please fill me in on where we are at with this and what you see that remains to be done.

Thank you for your work on this.

Devon

ER APPEAL OF NON-SEPARATION ISSUES WHICH COULD RESULT IN DISQUALIFICATION CAUSING AN OVERPAYMENT:

Hearing notice/APLA issue code 07: Whether the claimant is overpaid.

REFERENCE CODE 41 (as modified):

Iowa Code section 96.3-7-a provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Or, paraphrased without block text:

Because the claimant was not eligible to receive unemployment insurance benefits because he/she [refused a suitable offer of work without good cause/was not able and available for work], benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. Iowa Code § 96.3-7-a.

ER APPEAL OF SEPARATION:

Hearing notice/APLA issue code: Was claimant overpaid benefits? Did employer participate in fact-finding? Is employer's account chargeable, and must any overpayment be repaid?

REFERENCE CODE 41A (as modified):

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Or, paraphrased without block text:

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding regarding the separation which resulted in the preliminary award of benefits. If recovery of an overpayment from a claimant is not required because the employer did not participate in the initial proceeding that resulted in an award of benefits, the employer will be subject to charge for the overpaid benefits. Iowa Code § 96.3-7.

Message: FW: Implementation of UC Program Integrity Amendments**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862453
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Implementation of UC Program Integrity Amendments

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:08 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

From: Mormann, Marlon [IWD]
Sent: Wednesday, July 17, 2013 12:40 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

Does anyone have overpayment language for reasoning and conclusions so we can modify our shells????????????????? I want a one size fits all shell that hits all overpayment issues. Please advise.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Wednesday, July 17, 2013 10:50 AM
To: Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

Thanks for the info, Steve. Who would like to present the topic and answer questions at the staff meeting tomorrow?

From: Wise, Steve [IWD]
Sent: Tuesday, July 16, 2013 2:59 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Donner, Lynette [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]
Subject: FW: Implementation of UC Program Integrity Amendments

Below is the email I sent to Joe W., Mike, Joe B. and Dave. There was a meeting after this that I attended by telephone conference that was inconclusive, although everyone agreed that the UI Division would have to have a process in place to handle remands on the issue of whether a claimant would be required to repay an overpayment and whether the employer's account would be charged for an overpayment because there are going to be cases where the fact finding materials would not be available. There was no conclusion that I am aware of that we absolutely could not remand these cases. UI Division was concerned about the computer programming issue of setting up a new ANDs decision or issuing a typed decision.

My main point was that if one of UI Appeals' goals is to reduce postage and copying, that would be defeated by having to send out fact-finding material to the parties in every case involved an employer appeal of a grant of benefits to a claimant. In addition, we are taking up valuable hearing time on a topic that may or may not be necessary since employer's participation is only relevant IF we reverse the grant of benefits, which cannot know in advance. No one was really persuaded and thought that we would not have to send out fact-finding information in advance, but could simply ask the parties about non-participation and tell them what was in the administrative file. Joe B. was not convinced that there would be a DOL compliance issue with our deciding the issue without remand as long as we gave parties a hearing. In a practical sense, he is probably correct that what we do will not be scrutinized that closely by DOL as long as the law was passed.

The last thing Joe told me was that he was going to send out instructions giving ALJs discretion in handling the issue of whether a claimant would be required to repay an overpayment and whether the employer's account would be charged for an overpayment. That is an ALJ could question the parties about the non-participation issue and making a decision on the issue, but would not be required to every case, and if the ALJ was uncomfortable with addressing the issue in a particular case, they could remand since the UI Division has to have a process in place in any event for deciding this issue. He said he was going to advise Mike W. of this plan. Obviously, Joe never got the instruction out and I have no idea if he told Mike W. of this plan.

I think South Dakota's approach is the most sensible and follows the DOL Program Letter, but I am obviously in the minority on this.

I think there is another issue as well, that I have not brought up before. We are focused on the employer non-participation issue, but for non-recovery of the overpayment from the claimant the law also states "the benefits were not received as a result of fraud or willful misrepresentation." So if claimant reported that she was laid off due to lack of work and you find that they quit, even where the employer failed to participate are we going to decide the overpayment must be recovered due to willful misrepresentation? Will Investigations and recovery then adopt that and treat as a fraud overpayment? Shouldn't the claimant then receive notice that a potential issue is willful misrepresentation? And of course, willful misrepresent and fraud cases normally go to DIA. Also interesting then is because of the inconsistent language of 96.3-7-b(1)(a) and (1)(b), you could have a case where an employer is charged for an overpayment that is not waived. Everybody loses.

Let me know if you have other questions.

Steve

From: Wise, Steve [IWD]
Sent: Wednesday, July 03, 2013 9:51 AM
To: Walsh, Joseph [IWD]; Wilkinson, Michael [IWD]; Bervid, Joseph [IWD]; Eklund, David [IWD]
Subject: Implementation of UC Program Integrity Amendments

At the Director's request at our last staff meeting, I sent email inquiries about implementation of UC Program Integrity Amendments to other states. I sent emails to contacts in Kentucky, South Dakota, Maryland, Idaho, Alaska, Arkansas, New Hampshire, Nebraska, Oklahoma, Wisconsin, Minnesota, Georgia, Utah, Wyoming, and Washington. I am still getting responses back.

Many states who have responded have laws that won't go into effect until October 2013 and have laws stating an employer will be charged for an overpayment (1) due to Employer's failure to timely or adequately respond to requests for information **AND** (2) where that employer has a "pattern of failing to respond," which they intend to track for a period of time following the effective date of the law. States have various measures for patterns of failing to respond. The Maryland Chief Hearing Officer said "I will likely be contacting you in another month or two as we approach October to see how you guys got this up and running."

South Dakota is the state that has responded so far who has a statute with language similar to ours that does not require a "pattern of failing to respond" and a law that went into effect July 1, 2013.

Here's South Dakota's new law. "However, no relief of charges applies if the department determines that an erroneous payment has been made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the department's request for information relating to the payment of benefits. For the purposes of this section, an erroneous payment is a payment that would not have been made but for the failure of the employer or the employer's agent to fully respond to the department's request pursuant to § 61-7-5."

Administrative Law Judge Shannon George-Larson after consulting with UI Director Pauline Heier, stated:

We will hold hearings as usual when an employer appeals a determination granting benefits. We will list the usual issues of "Is Claimant disqualified from receiving benefits because Claimant voluntarily quit employment without good cause or was discharged for work-connected misconduct?" and "Is Employer's experience-rating account subject to or exempt from charge?" If the ALJ decision reverses the Agency determination granting benefits, we will use the following language in the Conclusions and the Order to address the chargeability issue:

Employer's experience-rating account is exempt from charge unless the Agency determines Employer is subject to charge for benefits already paid to Claimant due to Employer's failure to timely or adequately respond to Agency inquiries.

The Agency will issue an overpayment determination to Claimant as usual if benefits have been paid. It will be up to the Agency to review the file and issue a determination finding Employer is subject to charge due to fault. If Agency does not issue a determination, our conclusion of no charge stands. If Agency issues a determination, the determination will go to Employer only with appeal rights. It would go to Employer only because in our view Claimant is not an interested party in this issue.

UI Director Pauline Heier, stated

Our UI department will be handling the issue of employer fault at the time we make a decision where an overpayment is created. The nonmonetary determination will include the following statement.

NOTICE TO EMPLOYER: Your experience rating account number {~15~} is charged for benefits paid from {beginning date} to {ending date} as you failed to respond timely or adequately to the department's request for information. Your account is exempt from charge after {ending date}.

The difference between South Dakota and Iowa is that South Dakota has always had a general waiver of overpayment rule that an overpayment can be waived if a claimant requests a waiver of overpayment and establishes that claimant (1) was not at fault in receiving the overpayment, and (2) does not have the ability to repay the overpayment. That is why in South Dakota they say the claimant will not be an interested party on the employer charge issue. Also South Dakota has never included "whether the claimant was overpaid unemployment insurance benefits" as an issue in a separation appeal hearing. The reversal of an award of benefits by an ALJ in South Dakota always triggers the Overpayment unit to issue an overpayment determination.

Message: FW: Implementation of UC Program Integrity Amendments**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862455
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Implementation of UC Program Integrity Amendments

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:10 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

From: Donner, Lynette [IWD]
Sent: Thursday, July 18, 2013 7:24 AM
To: Mormann, Marlon [IWD]; Wise, Steve [IWD]; Lewis, Devon [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

I don't believe that even under these circumstances an employer would be deemed to be a "claimant" as "claimant" is defined by the statute and rules.

From: Mormann, Marlon [IWD]
Sent: Thursday, July 18, 2013 6:05 AM
To: Wise, Steve [IWD]; Lewis, Devon [IWD]; Donner, Lynette [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

What I am saying is, does an employer become a claimant for the double affirmance rule? So if they win at the ALJ appeal and win at fact finding on overpayment then lose on overpayment at ALJ appeal no charges to their account? Is an employer a claimant for overpayment cases now that charges are assessed based on hearing participation.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Wise, Steve [IWD]
Sent: Wednesday, July 17, 2013 9:04 PM
To: Mormann, Marlon [IWD]; Lewis, Devon [IWD]; Donner, Lynette [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

The only time the double affirmance rule would kick in would be if (1) Agency Grants Benefits (2) ALJ affirms Grant, and case is remanded for some reason by EAB and District Court for a new hearing and (3) on remand the ALJ reverses Grant. I had one recently like that and District Court ruled that no matter the outcome on remand, the claimant would not be required to repay any overpayment because of the double affirmance rule.

In all other cases, no double affirmance rule because all the other cases involve (1) Agency Grants Benefits (2) ALJ Reverses Grant.

From: Mormann, Marlon [IWD]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lewis, Devon [IWD]; Donner, Lynette [IWD]; Wise, Steve [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

Does the double affirmance rule apply to any of these cases?

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Wednesday, July 17, 2013 5:19 PM
To: Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Wise, Steve [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

I talked to Ryan West in Claims yesterday and he seemed resigned to remands on this issue. I think the discussion points are valid and we should proceed on that basis unless instructed otherwise. Steve and Lynette, would you please lead the discussion about this tomorrow? Could we develop a *very short* tutorial outline

or flow chart for FF and DIA (and us) about this? Who would like to help provide training to FF and DIA?

From: Donner, Lynette [IWD]
Sent: Wednesday, July 17, 2013 12:53 PM
To: Mormann, Marlon [IWD]; Lewis, Devon [IWD]; Wise, Steve [IWD]
Cc: Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

The draft previously circulated had suggested overpayment ref. code and model paraphrased code language, hinged on the assumption that we were going to go ahead and do the determination on participation, and only focus on participation, not the other "hidden" issues, but until the policy decision is made, I don't know that it's ready to implement.

From: Mormann, Marlon [IWD]
Sent: Wednesday, July 17, 2013 12:40 PM
To: Lewis, Devon [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

Does anyone have overpayment language for reasoning and conclusions so we can modify our shells????????????????? I want a one size fits all shell that hits all overpayment issues. Please advise.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Wednesday, July 17, 2013 10:50 AM
To: Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]; Hillary, Teresa [IWD]
Subject: RE: Implementation of UC Program Integrity Amendments

Thanks for the info, Steve. Who would like to present the topic and answer questions at the staff meeting tomorrow?

From: Wise, Steve [IWD]
Sent: Tuesday, July 16, 2013 2:59 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc: Donner, Lynette [IWD]; Wise, Debra [IWD]; Mormann, Marlon [IWD]
Subject: FW: Implementation of UC Program Integrity Amendments

Below is the email I sent to Joe W., Mike, Joe B. and Dave. There was a meeting after this that I attended by telephone conference that was inconclusive, although everyone agreed that the UI Division would have to have a process in place to handle remands on the issue of whether a claimant would be required to repay an overpayment and whether the employer's account would be charged for an overpayment because there are going to be cases where the fact finding materials would not be available. There was no conclusion that I am aware of that we absolutely could not remand these cases. UI Division was concerned about the computer programming issue of setting up a new ANDS decision or issuing a typed decision.

My main point was that if one of UI Appeals' goals is to reduce postage and copying, that would be defeated by having to send out fact-finding material to the parties in every case involved an employer appeal of a grant of benefits to a claimant. In addition, we are taking up valuable hearing time on a topic that may or may not be necessary since employer's participation is only relevant IF we reverse the grant of benefits, which cannot know in advance. No one was really persuaded and thought that we would not have to send out fact-finding information in advance, but could simply ask the parties about non-participation and tell them what was in the administrative file. Joe B. was not convinced that there would be a DOL compliance issue with our deciding the issue without remand as long as we gave parties a hearing. In a practical sense, he is probably correct that what we do will not be scrutinized that closely by DOL as long as the law was passed.

The last thing Joe told me was that he was going to send out instructions giving ALJs discretion in handling the issue of whether a claimant would be required to repay an overpayment and whether the employer's account would be charged for an overpayment. That is an ALJ could question the parties about the non-participation issue and making a decision on the issue, but would not be required to every case, and if the ALJ was uncomfortable with addressing the issue in a particular case, they could remand since the UI Division has to have a process in place in any event for deciding this issue. He said he was going to advise Mike W. of this plan. Obviously, Joe never got the instruction out and I have no idea if he told Mike W. of this plan.

I think South Dakota's approach is the most sensible and follows the DOL Program Letter, but I am obviously in the minority on this.

I think there is another issue as well, that I have not brought up before. We are focused on the employer non-participation issue, but for non-recovery of the overpayment from the claimant the law also states "the benefits were not received as a result of fraud or willful misrepresentation." So if claimant reported that she was laid off due to lack of work and you find that they quit, even where the employer failed to participate are we going to decide the overpayment must be recovered due to willful misrepresentation? Will Investigations and recovery then adopt that and treat as a fraud overpayment? Shouldn't the claimant then receive notice that a potential issue is willful misrepresentation? And of course, willful misrepresent and fraud cases normally go to DIA. Also interesting then is because of the inconsistent language of 96.3-7-b(1)(a) and (1)(b), you could have a case where an employer is charged for an overpayment that is not waived. Everybody loses.

Let me know if you have other questions.

Steve

From: Wise, Steve [IWD]
Sent: Wednesday, July 03, 2013 9:51 AM
To: Walsh, Joseph [IWD]; Wilkinson, Michael [IWD]; Bervid, Joseph [IWD]; Eklund, David [IWD]
Subject: Implementation of UC Program Integrity Amendments

At the Director's request at our last staff meeting, I sent email inquiries about implementation of UC Program Integrity Amendments to other states. I sent emails to contacts in Kentucky, South Dakota, Maryland, Idaho, Alaska, Arkansas, New Hampshire, Nebraska, Oklahoma, Wisconsin, Minnesota, Georgia, Utah, Wyoming, and Washington. I am still getting responses back.

Many states who have responded have laws that won't go into effect until October 2013 and have laws stating an employer will be charged for an overpayment (1) due to Employer's failure to timely or adequately respond to requests for information AND (2) where that employer has a "pattern of failing to respond," which they intend to track for a period of time following the effective date of the law. States have various measures for patterns of failing to respond. The Maryland Chief Hearing Officer said "I will likely be

contacting you in another month or two as we approach October to see how you guys got this up and running.”

South Dakota is the state that has responded so far who has a statute with language similar to ours that does not require a “pattern of failing to respond” and a law that went into effect July 1, 2013.

Here’s South Dakota’s new law. “However, no relief of charges applies if the department determines that an erroneous payment has been made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the department’s request for information relating to the payment of benefits. For the purposes of this section, an erroneous payment is a payment that would not have been made but for the failure of the employer or the employer’s agent to fully respond to the department’s request pursuant to § 61-7-5.”

Administrative Law Judge Shannon George-Larson after consulting with UI Director Pauline Heier, stated:

We will hold hearings as usual when an employer appeals a determination granting benefits. We will list the usual issues of “Is Claimant disqualified from receiving benefits because Claimant voluntarily quit employment without good cause or was discharged for work-connected misconduct?” and “Is Employer’s experience-rating account subject to or exempt from charge?” If the ALJ decision reverses the Agency determination granting benefits, we will use the following language in the Conclusions and the Order to address the chargeability issue:

Employer’s experience-rating account is exempt from charge unless the Agency determines Employer is subject to charge for benefits already paid to Claimant due to Employer’s failure to timely or adequately respond to Agency inquiries.

The Agency will issue an overpayment determination to Claimant as usual if benefits have been paid. It will be up to the Agency to review the file and issue a determination finding Employer is subject to charge due to fault. If Agency does not issue a determination, our conclusion of no charge stands. If Agency issues a determination, the determination will go to Employer only with appeal rights. It would go to Employer only because in our view Claimant is not an interested party in this issue.

UI Director Pauline Heier, stated

Our UI department will be handling the issue of employer fault at the time we make a decision where an overpayment is created. The nonmonetary determination will include the following statement.

NOTICE TO EMPLOYER: Your experience rating account number {~15~} is charged for benefits paid from {beginning date} to {ending date} as you failed to respond timely or adequately to the department’s request for information. Your account is exempt from charge after {ending date}.

The difference between South Dakota and Iowa is that South Dakota has always had a general waiver of overpayment rule that an overpayment can be waived if a claimant requests a waiver of overpayment and establishes that claimant (1) was not at fault in receiving the overpayment, and (2) does not have the ability to repay the overpayment. That is why in South Dakota they say the claimant will not be an interested party on the employer charge issue. Also South Dakota has never included “whether the claimant was overpaid unemployment insurance benefits” as an issue in a separation appeal hearing. The reversal of an award of benefits by an ALJ in South Dakota always triggers the Overpayment unit to issue an overpayment determination.

Message: FW: Reference Code 41B finalized**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862456
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Reference Code 41B finalized

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:10 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

 [REFERENCE CODE 41B.doc](#) (45 Kb HTML)

From: Wise, Steve [IWD]

Sent: Tuesday, August 20, 2013 9:31 AM

To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]

Subject: Reference Code 41B finalized

I sent out a proposed Reference Code 41B last week—got no objections to it. Below is the email where I explained when it would be used. I know people have now had some cases where it applies. I'm only including the paraphrase language for this statute as the Reference Code 41B, not the verbatim statute. I am giving this language to Paula and Cheryll now so if you want to just include Ref 41B in typing your decision, they can just insert it.

This is what I have drafted as language to use or modify for any case you have where you reverse a separation decision granting benefits where the fact-finding interview was on Monday, July 1 or later, which actually means any representative's decision issued July 2 or later because if the decision was issued on July 2, the fact finding was done on July 1. This is language that will be used only until you get an actual case where the parties have been put on notice that the issue of participation will be addressed. If you have a separation case where you reverse a representative's decision granting benefits issued July 1 or before, you will use Reference 41A and remand for a determination as to whether the claimant has to repay the overpayment only.

Let me know if you have any questions.

Steven A. Wise
 Administrative Law Judge
 515-281-3747

 BE GREEN - Please consider the environment before printing this e-mail.

REFERENCE CODE 41B

Statute Paraphrased with remand language

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Message: FW: PROCEDURES FOR HANDLING § 96.3-7-b CASES**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862457
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: PROCEDURES FOR HANDLING § 96.3-7-b CASES

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:11 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

[PROCEDURES FOR HANDLING § 96.3-7-b CASES.pdf](#) (86 Kb HTML)

From: Wise, Steve [IWD]

Sent: Wednesday, August 21, 2013 1:49 PM

To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: Alexander, Marty [IWD]; Baughman, Myra [IWD]; Benson, Joni [IWD]; Oatts, Sandra [IWD]; Scott, Cheryl [IWD]; Shroyer, Paula [IWD]; Ziegler, Vanessa [IWD]; Anderson, Donnell [IWD]; Wilkinson, Michael [IWD]

Subject: PROCEDURES FOR HANDLING § 96.3-7-b CASES

Here is the full process flow (and attached) that Appeals in consultation with the UI Division has come up with. It includes information on intake, what the UI Division will be doing, and the types of appeals we will be handling, and what will be decided based on the type of case. I am sending this to everyone in Appeals but it mainly affects ALJs and people doing intake. Let me know if you have any questions.

For those who don't know, there was a new law that went into effect July 1, that charges employer in certain cases for overpayments caused by the employer failing to participate in the fact-finding interview.

PROCEDURES FOR HANDLING § 96.3-7-b CASES

During the fact-finding interview, the fact finder will make a determination on whether the employer participated in the fact-finding interview or not. This will be noted on Notice of UI Fact-finding Interview page (SIR). A check box will be created for this along with one that designates the employer as a base-period employer. UI Division will share a copy of the revised Notice so we can readily pick this out.

For an **Employer Appeal** of a **Decision Granting Benefits** to the claimant in a **Separation Case**.

1. If the **Separation Decision** that comes before the ALJ was issued **July 2, 2013, or later** the process the ALJ will follow depends on whether the employer was a **Base-Period Employer** or not.
2. If the employer was a **Base Period Employer**.
 - a. The issue will be the separation issues of discharge and quit and "Whether the claimant was overpaid" and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** "Should benefits be repaid by claimant or charged to the employer due to employer's participation in the fact finding? Law § 96.3-7 & 871 IAC 24.50-7.
 - b. Administrative file does not have to be sent out unless requested by a party.
 - c. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
 - d. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.
 - i. If the employer agrees that the employer did not participate in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits and (3) the employer is not relieved of benefit charges because the employer failed to participate. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code in this manner.
 - ii. If the claimant and employer agree that the employer participated in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code and automatically set up the overpayment.
 - iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant or charged to the employer due to employer's participation in the fact finding. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the employer will be charged and if the overpayment will be waived.

3. If the employer was a **Non-Base Period Employer**.
 - a. Charges to the employer are not involved in these type of cases where there is an overpayment.
 - b. The issue will be as now the separation issues of discharge and quit and "Whether the claimant was overpaid and Normal Law §§, 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** Should benefits be repaid by claimant due to employer's participation in the fact finding? Law § 96.3-7 and 871 IAC 24.50-7.
 - c. Administrative file does not have to be sent out unless requested by a party.
 - d. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
 - e. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.
 - i. If the employer agrees that the employer did not participate in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits.
 - ii. If the claimant and employer agree that the employer participated in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated.
 - iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the overpayment will be waived.
4. If the **Separation Decision** was issued **July 1, 2013, or before** there is no change in what is being done.
 - a. The issue will be as now the separation issues of discharge and quit and "Whether the claimant was overpaid" and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7.
 - b. Administrative file does not have to be sent out unless requested by a party.
 - c. These cases **do not** involve the issue of whether the employer is to be charged for the overpayment.
 - d. ALJ can remand as before on the issue of amount of the overpayment and whether repayment of the overpayment is required.

- [Image 1](#)
 - [Image 2](#)
 - [Image 3](#)
-

Image 1

PROCEDURES FOR HANDLING § 96.3-7-b CASES

During the fact-finding interview, the fact finder will make a determination on whether the employer participated in the fact-finding interview or not. This will be noted on Notice of UI Fact-finding Interview page (SIR). A check box will be created for this along with one that designates the employer as a base-period employer. UI Division will share a copy of the revised Notice so we can readily pick this out.

For an **Employer Appeal of a Decision Granting Benefits** to the claimant in a **Separation Case**.

1. If the **Separation Decision** that comes before the ALJ was issued **July 2, 2013, or later** the process the ALJ will follow depends on whether the employer was a **Base-Period Employer or not**.

2. If the employer was a **Base Period Employer**.

a. The issue will be the separation issues of discharge and quit and "Whether the claimant was overpaid" and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** "Should benefits be repaid by claimant or charged to the employer due to

employer's participation in the fact finding? Law § 96.3-7 & 871 IAC 24.50-7.

b. Administrative file does not have to be sent out unless requested by a party.

c. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC

for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.

d. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and

ERIC for the decision in question for employer participation and ask the parties about participation.

i. If the employer agrees that the employer did not participate in the factfinding interview and ALJ reverses the decision granting benefits creating

an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits and (3) the employer is not relieved of benefit charges because the employer failed to participate. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code in this manner.

ii. If the claimant and employer agree that the employer participated in the

fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated. An IT request is in process and

Image 2

should be ready by October 1 that will allow the ALJ to lock the claim with a special code and automatically set up the overpayment.

iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the

issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant or charged to the employer due to employer's participation in the fact finding. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the employer will be charged and if the overpayment will be waived.

3. If the employer was a **Non-Base Period Employer**.

- a. Charges to the employer are not involved in these type of cases where there is an overpayment.
- b. The issue will be as now the separation issues of discharge and quit and

"Whether the claimant was overpaid and Normal Law §§, 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** Should benefits be repaid by claimant due to employer's participation in the fact finding? Law § 96.3-7 and 871 IAC 24.50-7.

- c. Administrative file does not have to be sent out unless requested by a party.
- d. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
- e. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.

- i. If the employer agrees that the employer did not participate in the factfinding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits.
- ii. If the claimant and employer agree that the employer participated in the

fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated.

- iii. If the claimant and employer do not agree that the employer participated

in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ

Image 3

issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the overpayment will be waived.

4. If the **Separation Decision** was issued **July 1, 2013, or before** there is no change in what is being done.

- a. The issue will be as now the separation issues of discharge and quit and "Whether the claimant was overpaid" and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7.

- b. Administrative file does not have to be sent out unless requested by a party.
- c. These cases **do not** involve the issue of whether the employer is to be charged for the overpayment.
- d. ALJ can remand as before on the issue of amount of the overpayment and

whether repayment of the overpayment is required.

Message: FW: 871 IAC 24.50.(7) I'm wondering why this code section is on all my hearing notices**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862458
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: 871 IAC 24.50.(7) I'm wondering why this code section is on all my hearing notices

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:12 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

From: Donner, Lynette [IWD]

Sent: Thursday, August 22, 2013 10:31 AM

To: Ackerman, Susan [IWD]; Shroyer, Paula [IWD]; Scott, Cheryl [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]; Alexander, Marty [IWD]; Anderson, Donnell [IWD]; Baughman, Myra [IWD]; Benson, Joni [IWD]; Oatts, Sandra [IWD]; Ziegler, Vanessa [IWD]

Subject: RE: 871 IAC 24.50.(7) I'm wondering why this code section is on all my hearing notices

Yes. The waivers for non-participation comes from:

REFERENCE CODE 226

871 IAC 24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The law change that deals with the chargeability of the ER for non-participation is from the more recent code change to 96.3-7, set out in 41A. The Agency definition of "participation" will continue to apply to the amended 96.3-7.

From: Ackerman, Susan [IWD]

Sent: Thursday, August 22, 2013 10:21 AM

To: Shroyer, Paula [IWD]; Scott, Cheryl [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]; Alexander, Marty [IWD]; Anderson, Donnell [IWD]; Baughman, Myra [IWD]; Benson, Joni [IWD]; Oatts, Sandra [IWD]; Ziegler, Vanessa [IWD]

Subject: FW: 871 IAC 24.50.(7) I'm wondering why this code section is on all my hearing notices

Maybe I'm missing something but this statute applies only to claimant's waivers of overpayments of temporary extended unemployment compensation.

From what I can see, this has nothing to do with our new issues regarding waivers resulting from the lack of employer participation.

It's on almost every case with the 96.3-7(B) and most of these claimants haven't received temporary extended benefits.

REFERENCE CODE 229

871 IAC 24.50(7) provides:

Waiver of overpayments.

a. Individuals who have received amounts of temporary extended unemployment compensation to which they were not entitled shall be required to repay the amounts of such temporary extended unemployment compensation except that the state repayment may be waived if the workforce development department determines that:

- (1) The payment of such temporary extended unemployment compensation was without fault on the part of the individual; and
- (2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors shall be considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the temporary extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and which was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors shall be considered:

- (1) Whether the overpayment was the result of a decision on appeal;
 - (2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and
 - (3) Whether recovery of the overpayment will cause financial hardship to the individual.
- This rule is intended to implement Iowa Code sections 96.11 and 96.29.

Administrative Law Judge Susan Ackerman

Iowa Unemployment Insurance Appeals

1000 East Grand Avenue

Des Moines, Iowa 50319

Phone: (515) 281-3747

Fax: (515) 242-5144

Susan.ackerman@iwd.iowa.gov

From: Hillary, Teresa [IWD]

Sent: Thursday, August 30, 2012 10:22 AM

To: Anderson, Dan [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Nice, Terence [IWD]; Mormann, Marlon [IWD]; Lewis, Devon [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]; Walsh, Joseph [IWD]

Subject: 871 IAC 24.50.(7)

All. I keep putting in the wrong waiver section. The correct one is 871 IAC 24.50(7). Waiver of Overpayments.

Message: FW: Finding of Amount Overpaid RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862459
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Finding of Amount Overpaid RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:14 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

From: Wise, Steve [IWD]
Sent: Thursday, September 26, 2013 3:28 PM
To: Lewis, Devon [IWD]
Subject: RE: Finding of Amount Overpaid RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES

I was going to send out a reference to

26.17(4) A presiding officer's decision allowing benefits shall result in the prompt payment of all benefits due. An appeal shall not stay the payment of benefits. A presiding officer's decision reversing an allowance of benefits shall include a statement of overpayment of benefits erroneously paid.

But my guess is that those who think we shouldn't calculate the OP will say that a "statement of overpayment of benefits erroneously paid" does not mean calculating the amount. I have a different opinion, but I am prone to complicated legal analysis.

From: Lewis, Devon [IWD]
Sent: Thursday, September 26, 2013 3:17 PM
To: Mormann, Marlon [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyster, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]
Cc: Shroyer, Paula [IWD]; Scott, Cheryl [IWD]
Subject: RE: Finding of Amount Overpaid RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES

I don't know that there was a "deal" one way or the other. I admit I have not been calculating overpayments for a while but I think it's a good idea to go back to doing it where we can. It gives the parties some idea of the amount of benefits at issue and helps remind me to lock the claim. It also gets testimony on the record about the receipt of benefits. If a finding of benefit payment and/or conclusion of overpayment of benefits is made in the decision, that should be supported in the record with inquiry and testimony.

From: Mormann, Marlon [IWD]
Sent: Thursday, September 26, 2013 2:06 PM
To: Wise, Steve [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyster, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]
Cc: Shroyer, Paula [IWD]; Scott, Cheryl [IWD]
Subject: Finding of Amount Overpaid RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES

OK, Steve, I read this carefully. I guess I thought we had a deal on these overpayments and would never enter an amount overpaid. Are you sure we want to calculate the overpayment. I quote you below.

So now in cases where I am not remanding for a determination on employer participation, I'm not remanding for determination of the amount of the overpayment either. I doing what I used to do and making a finding on the amount overpaid and a conclusion that the claimant was overpaid that amount.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Wise, Steve [IWD]
Sent: Thursday, September 26, 2013 11:24 AM
To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyster, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]
Cc: Shroyer, Paula [IWD]; Scott, Cheryl [IWD]
Subject: RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES

Corrected the participation v. nonparticipation mix up.

From: Wise, Steve [IWD]

Sent: Thursday, September 26, 2013 11:14 AM

To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]

Subject: PROCEDURES FOR HANDLING § 96.3-7-b CASES

I've got some questions on PROCEDURES FOR HANDLING § 96.3-7-b cases, so here is the guidance I would give you at this point.

Remember if the record is unclear about whether the employer did or did not participate, you remand using reference 41B.

REFERENCE CODE 41B

Statute Paraphrased with remand language

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

If the case involves a base-period employer, the issue is listed on the hearing notice, the claimant actually was overpaid benefits, and you have a basis for making the participation decision, you decide it. I've come up with two reference codes 41C-1 and 41C-2 that could be used depending on the outcome. I have not formally given these to word processing yet, so for now if you like them, just cut and paste. If everyone agrees with the proposed language for REFERENCE CODE 41C-1 (non-participation) and REFERENCE CODE 41C-2 (participation), I can instruct Paula and Cheryll to add them to the list.

REFERENCE CODE 41C-1 (non-participation)

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

REFERENCE CODE 41C-2 (participation).

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

Finally, in term of remanding for the amount of the overpayment, before 96.3-7 was amended several year ago, we never remanded for the amount of the overpayment. We just started doing that after the amendment because were remanding anyway. I normally make a finding about the amount of benefits a claimant received following a disqualifying separation. "The claimant received \$xxx in benefits after the separation from employment."

Back before we started remanding on the participation issue, I always made a conclusion that that the claimant was overpaid the amount of benefits I found that they received. I put that in the decision paragraph too. "The claimant was overpaid \$xxx in benefits.

So now in cases where I am not remanding for a determination on employer participation, I'm not remanding for determination of the amount of the overpayment either. I doing what I used to do and making a finding on the amount overpaid and a conclusion that the claimant was overpaid that amount.

Message: FW: Misconduct general information Tip Sheet**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862463
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Misconduct general information Tip Sheet

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:40 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

From: Lewis, Devon [IWD]
Sent: Monday, August 19, 2013 3:59 PM
To: Mormann, Marlon [IWD]
Subject: RE: Misconduct general information Tip Sheet

I agree. That's why this one will be on general issues that apply across the board to misconduct. I've got many more specific topical pages in the desk manual under the heading of misconduct started that we will get to eventually.

From: Mormann, Marlon [IWD]
Sent: Monday, August 19, 2013 3:06 PM
To: Lewis, Devon [IWD]; Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]
Subject: RE: Misconduct general information Tip Sheet

I suggest multiple Misconduct tip sheets. Break it up into absenteeism, insubordination, theft, and other issues. This is too broad to cover.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Lewis, Devon [IWD]
Sent: Monday, August 19, 2013 3:02 PM
To: Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]; Lewis, Devon [IWD]
Subject: Misconduct general information Tip Sheet

The Director would like a tip sheet generated on the issue of misconduct. That is a very broad category but a tip sheet with some general principles – BOP, intent/inability, warning, current act, etc. - could be on this. Vicki has already included those two topics on the attendance tip sheet. I'm sure there will be many more topical tip sheets to come as we work on the desk manual.

While we will likely incorporate tip sheets into the desk manual under "plain language," please remember that this is to be written for a "Joe 6-pack" C and E audience. I've attached the desk manual topic page that will get it started. I'm not sure who has the original tip sheet formatted document. Any takers who have not already done one?

Devon

 **BE GREEN** – Please consider the environment before printing this e-mail.

Message: FW: tip sheet, employer participation at fact finding.**Case Information:**

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:58 PM
Item ID: 40862464
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: tip sheet, employer participation at fact finding.

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 3:40 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

 [Employer participaiton at fact finding tip.docx](#) (18 Kb HTML)  [image002.gif](#) (12 Kb HTML)

From: Mormann, Marlon [IWD]
Sent: Tuesday, October 08, 2013 9:44 AM
To: Wise, Steve [IWD]; Benson, Joni [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]
Subject: tip sheet, employer participation at fact finding.

Thanks to all who chipped in to help. Here is the final draft. I will give you till noon to tear it to pieces...

Marlon Mormann, Administrative Law Judge
515-265-3512

**EMPLOYER UNEMPLOYMENT TIP SHEET, PARTICIPATION
AT FACT FINDING INTERVIEWS.**

Effective July 1, 2013 an employer may face charges to its account for failure to participate at a fact finding interview even if the employer prevails on appeal in the unemployment hearing.

Personal participation by an employer representative with firsthand knowledge will almost always suffice to prevent charges to employer's account in the above circumstance. *An employer representative, who has first-hand knowledge about the issue and provides information to the fact-finder, is the best kind of participation.*

The rule also allows for participation by documentation. The employer must submit detailed factual information that if un-refuted would be sufficient to allow employer to win.

Mandatory requirements when participating by documents.

- Employer must provide the name and telephone number of an employee representative with firsthand information who is available to be contacted at the time of the fact finding interview.
- Employer must provide detailed written statements giving dates and circumstances of the discharge incident or reasons for a quit.
- The specific rule or policy relied upon must be submitted for a discharge case.
- For an absenteeism discharge the statement must include circumstances of all absences relating to the discharge with proof that the absences are unexcused under Iowa law.

What is not adequate participation at fact finding?

- Written or oral statements or general conclusions without supporting detailed factual information are not considered participation.
 - Information submitted after fact finding is not participation.
-

[Preview is not available (conversion excluded for this file type).]

Message: FW: forced quits - please indicate how you treat this rule**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862467
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: forced quits - please indicate how you treat this rule

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 4:16 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

 [Quit in Lieu of Discharge 11B-UI-03210.EAB.pdf](#) (45 Kb HTML)

From: Wise, Steve [IWD]
Sent: Monday, September 23, 2013 3:58 PM
To: Lewis, Devon [IWD]; Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]
Subject: RE: forced quits - please indicate how you treat this rule

- a) consider the separation as a discharge and take evidence on alleged misconduct.

I sent the attached EAB decision out to everyone on April 24 where the EAB cites decisions from Vicki, Julie, Kent, Bonny, Beth, James, me, and its past decisions supporting the conclusion that a quit in lieu of discharged should be treated as a discharge and the issue of misconduct be addressed. We also thoroughly discussed a similar EAB decision that Dan handed out in a staff meeting in 2010. I agree with the reasoning.

From: Lewis, Devon [IWD]
Sent: Monday, September 23, 2013 3:12 PM
To: Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]; Lewis, Devon [IWD]
Subject: forced quits - please indicate how you treat this rule

The discussion we had in late August about this topic of EAB remands has resurfaced and further information is requested from one of our colleagues. I did not hear more than one comment about this topic then. I've included the text of the rule below for your convenience. Please reply all and indicate how you treat this rule. Thank you for your participation.

- Do you,
 a) consider the separation as a discharge and take evidence on alleged misconduct.
 Or do you,
 b) decide the issue as being an involuntary separation and allow benefits without addressing the issue of alleged misconduct.
 Or,
 c) another method. If so, please explain.

REFERENCE CODE 198

IAC 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Devon

- [Image 1](#)
 - [Image 2](#)
 - [Image 3](#)
 - [Image 4](#)
 - [Image 5](#)
 - [Image 6](#)
-

Image 1

BEFORE THE

EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

HECTOR VILLARREAL

Claimant,

and

DFS INC

Employer.

:
:
: **HEARING NUMBER: 11B-UI-03210**
:
:
: **EMPLOYMENT APPEAL BOARD**
: **DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 24.26(21)

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Hector Villarreal (Claimant) worked for DFS, Inc. (Employer) as a full time feed truck delivery driver from April 26, 2010 until January 31, 2011. (Tran at p. 4; p. 8). Under the Employer's policies a driver who has his license suspended can be fired. (Ex. B). Drivers are required to notify the Employer if their licenses are suspended, revoked, or canceled. (Tran at p. 5; Ex. G).

On May 4, 2010 the Claimant was caught speeding. (Tran at p. 5; p. 13; Ex. D). He was convicted for this offense on May 17, 2010. (Ex. D). On January 6, 2011 the Claimant's license to drive was suspended for a serious violation. (Tran at p. 5; p. 8; Ex. E). His license could be reinstated no sooner than March 10, 2011. (Ex. E). The Claimant first reported this to the Employer on January 31. (Tran at p. 5-6). He never had previously reported the May 17 conviction to the Employer. (Tran at p. 5-6; p. 14). On January 31, 2011, the Claimant asserted that he was the victim of identity theft and had lost his

Image 2

Page 2
11B-UI-03210

license due to an OWI which belonged to his brother. (Tran at p. 5-6; Ex. G). Yet no OWI shows on the Claimant's records. (Ex. D; Ex. E). The suspension was not the result of a putative OWI, but for the serious violation speeding ticket. (Tran at p. 11-12; Ex. D, Ex. E). The Claimant did not attend the driver improvement program offered by the DOT. (Tran at p. 13).

The available court records for the May 17 guilty plea show that the Claimant plead to violating Iowa Code § 321.285 by going 81 miles per hour in a zone posted for 55. We have taken official notice of these facts because they are ones "whose accuracy cannot reasonably be questioned." I. R. Evid. 5.201. We need not give notice to these parties that we intend to take this notice since "fairness to the parties does not require an opportunity to contest such facts." Iowa Code §17A.14.

REASONING AND CONCLUSIONS OF LAW:

Is a Claimant Who Is Forced to Quit Automatically Qualified For Benefits No Matter What They Did Wrong?

The Administrative Law Judge seems to have found that whenever an employee is given the choice to quit or be fired, and the employee chooses the "quit" option, then the employee gets benefits regardless of any misconduct. We find that this is not the law.

As an initial matter, the opinion of the learned Administrative Law Judge carries weight with us, but so do the opinions of other Administrative Law Judges at Iowa Workforce. And we agree with the position taken by many other Administrative Law Judges of Iowa Workforce. For example, Administrative Law Judge Steve Wise has explained:

The unemployment insurance rules state that when a claimant is compelled to resign when given the choice of resigning or being discharged, it is not considered a voluntary leaving. 871 IAC 24.26(21). In such a case, the separation is treated as a discharge and the question becomes whether the discharge was for misconduct.

Murray v. Dept of Veteran's Affairs, 08A-UCFE-00011-SWT (3/18/08)(imposing disqualification for misconduct); *accord Miller v. Vendor's Unlimited*, 05A-UI-01997-S2T (2005)(ALJ Scheetz subjects case to misconduct analysis because "The claimant's separation was involuntary and must be analyzed as a termination."); *Sisson v. Mercy Hospital*, 04A-UI-10579-RT (2003)(ALJ Renegar writes "when she was given the choice of resigning or being discharged and this is not a voluntary leaving and is treated, at least for unemployment insurance benefit purposes, as a discharge. Therefore, disqualifying misconduct must be determined."); *Green v. Electric Pump, Inc.* 10A-UI-10034-VST (2010)(ALJ Seeck writes "Iowa law is clear that if an employee is given the choice of resigning or being terminated, this is not a voluntary leaving on the part of the employee. Accordingly, these cases are analyzed as a discharge for misconduct."); *Rick v. Cloverleaf Cold Storage*, 06A-UI-10030-NT (2006)(Judge Nice disqualifies based on misconduct where claimant given choice of quit or be fired); *Stokesbary v. IPC Int'l Corp*, 09A-UI18400-JTT (2009)(ALJ Timberland writes "In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits."); *Edmond v. Tone Brothers*, 06A-UI-06958-ET (2006)(ALJ Elder writes "Under Iowa law, when a claimant resigns under

Image 3

Page 3
11B-UI-03210

those circumstances it is considered to be a discharge rather than a voluntary leaving. Therefore, the administrative law judge finds the claimant was discharged from his employment."); *McGuire v. Bank of the West*, 07A-UI-00643-HT (2007)(ALJ Hendricksmeier disqualifies claimant on misconduct theory because "The claimant may have submitted a resignation but under the provisions of the above Administrative Code section, this is not a voluntary quit because continuing work was not available to her. She would have been discharged if she had not resigned. Therefore the determination must be whether she was discharged for misconduct."). We have unanimously reached this same conclusion ourselves. *Kelly v. Council Bluffs Catholic School System*, 10B UI07245 (2010); *Meeks v. Waterloo*, 11B UI-11311 (2011).

In *Flesher v IDJS*, 372 N.W.2d 230 (Iowa 1985) a claimant resigned when given the choice to resign or be discharged. The employer there protested as a voluntary quit, but Workforce disqualified the claimant based on misconduct. The Supreme Court held that the agency had authority to raise the misconduct issue, and disqualified the Claimant on misconduct. While not saying so in so many words, *Flesher* strongly supports the conclusion that a resignation in lieu of discharge should be analyzed as a discharge, and that if misconduct appears a disqualification can be imposed.

This position is consistent with the literal meaning of the rule, and with the policy of the Employment Security Law. A careful reading of the rule establishes that where a Claimant is given the choice of quitting or being fired this is not a voluntary quit. True it says, in the general provision that "the following are reasons for a claimant leaving employment with good cause attributable to the employer." This, in isolation, sounds like a forced quit is a quit for good cause. But the specific rule says "this shall not be considered a voluntary leaving." We agree. It's just not a voluntary quit. So it certainly is not disqualifying *as a voluntary quit*. But this does not mean it cannot be disqualifying as a discharge. Indeed, the rules state that "[a] discharge is a termination of employment initiated by the employer." 871 IAC 24.1(113). This case matches this definition, and the case should be analyzed as a discharge under the literal terms of the rules.

Policy, too, supports this approach. When analyzing this case as a discharge we ask whether misconduct is proven, and if so we deny benefits. We would not automatically grant benefits because the discharge took the form of a forced resignation. Iowa's Employment Security Law provides that it is to be interpreted "for the benefit of persons unemployed through no fault of their own." Iowa Code §96.2 (2011). An employee who commits misconduct is not unemployed through no fault of his own. And this is so whether he is fired outright or given a choice to resign first. We just cannot see how the policy behind the Employment Security Law should be any different for a claimant who commits misconduct and is fired, than it is for a claimant who commits misconduct and is given a choice to quit before being fired. Indeed, why would a Claimant who chooses "quit" get benefits but the exact same person would not get benefits if they chose "fired?" Frankly, the approach we take strikes us as the only one that makes any sense in terms of the purposes of the law.

Image 4

Page 4 11B-UI-03210

Did the Claimant Commit Misconduct?

Applying a misconduct analysis we have little trouble disqualifying the Claimant. Iowa Code Section 96.5(2)(a) (2011) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(a):

Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

Where an employee commits acts that impair the employee's ability to function on the job this can be misconduct even if the acts do not occur at work or during work hours. See *Cook v. IDJS*, 299 N.W.2d 698, 702 (Iowa 1980) ("While he received most of his driving citations during non-work hours and in his personal car, they all bore directly on his ability to work for Hawkeye."). Conduct that is contrary to established policies of the employer may be disqualifying even if the conduct is away from work. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416 (Iowa 1992)(drug offense).

Image 5

Page 5 11B-UI-03210

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We do not find credible the Claimant's assertion that he was suspended over some mix-up with his brother's OWI, or that the Claimant previously told his superiors about his speeding violation. Indeed, at the end of the hearing the Claimant says "if I would've received that letter to my had at my physical address, I would go to that class that was being offered..." and thereby avoided the whole problem. (Tran at p. 13). This testimony is entirely consistent with a serious violation based on speed, followed by a notice of required training in lieu of suspension. 761 IAC 615.43(a)(2)(driver improvement program offered to someone exceeding speed between 25 and 30 mph). It appears, as Exhibit E itself shows, that the suspension was for the serious violation itself (speeding), and rule 615.43(4) was not invoked. Either way, the greater weight of the evidence supports that the suspension was not due to some confusion of the Claimant with his brother.

The Claimant did speed by an excessive amount in May, 2010. This, in turn, endangered his license. The Claimant's conduct in speeding is similar to the conduct found to be disqualifying in *Cook*. In *Cook* the employee was a driver who received numerous speeding citations. Although Cook retained his driver's license the employer's insurance carrier refused to cover him due to his record. The Supreme Court found that the discharge of Cook was founded on misconduct. Like *Cook* this case involves speeding violations by the Claimant. Like *Cook* the Employer here decided to terminate the Claimant because the speeding meant he could no longer drive at work for a couple months. The Claimant "does not claim that anyone forced him to violate the laws of the road, yet he persisted in doing so." *Cook* at 702. We conclude, like the Court in *Cook*, that the Claimant was guilty of misconduct by his "self-inflicted" suspension of his license. *Id.*

In addition, we find that the Claimant did not tell the Employer of his guilty plea until January 2011. This delay in contravention of the Employer's policies is *by itself* sufficient to be disqualifying misconduct. See *White v EAB* 448 N.W.2d 691 (Iowa App. 1989)(lack of candor in internal investigation is disqualifying).

As for current act, the record established that the Employer acted promptly once it knew of the Claimant's speeding and license suspension on January 31. We determine the issue of "current act" by looking to the date of the termination and comparing this to the date the misconduct first came to the attention of the Employer. *Greene v. EAB*, 426 N.W.2d 659 (Iowa App. 1988)(using date notice of disciplinary meeting first given). Under this test the termination was not for a past act of misconduct.

Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

871 IAC 23.43(3) Rule of two affirmances.

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

Image 6

Page 6

11B-UI-03210

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will not be required to repay benefits already received.

DECISION:

The administrative law judge's decision dated May 4, 2011 is REVERSED. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)"a".

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

Monique F. Kuester

Elizabeth L. Seiser

RRA/fnv

Message: FW: Desk Manual topic draws**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862468
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Desk Manual topic draws

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 4:45 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

[=====ALJ Desk Manual TABLE OF CONTENTS - Topic Draws=====.doc](#) (42 Kb HTML)

Stated purpose of the desk manual. No dispute responses or claims of one-sidedness.

From: Lewis, Devon [IWD]
Sent: Friday, September 06, 2013 5:26 PM
To: Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]; Lewis, Devon [IWD]
Cc: Olivencia, Nicholas [IWD]; Wahlert, Teresa [IWD]
Subject: Desk Manual topic draws

I have attached a copy of the Desk Manual Table of Contents and the "basket draw" assignments. The Director wants the manual completed by the end of the year.

Ask others to share information (auto text language, forms, etc.) with you on your topics if you'd like. Please share your final edited form for further suggestion from others. I will send you what I have so far on various topics otherwise will send you a blank format topic sheet. If you would like an example of a completed topic page, please let me know and I will send that to you as well.

Keep in mind we are using this to help train future ALJs, find areas of inconsistency amongst ourselves, try different language (I know I get into a rut), help train FF, integrate info with DIA, and refresh ourselves as to updates since the last dictation guide was updated many, many years ago. This is an important project that deserves everyone's wisdom and experience. Thank you for sharing yours.

Devon

 BE GREEN – Please consider the environment before printing this e-mail.

ALJ DESK MANUAL – TABLE OF CONTENTS

Able to & Available for Work (Eligibility)DL

- Failure to Report
- LOA
- Medical
- On-Call Employment
- Partial Unemployment
- Reasonable Assurance
- Reemployment Services
- Work Search

Additional Programs JT

- DAT
- DUA
- EUCU
- TEB
- TEUC
- TRA

ALR Annotations LD

Business Closure LD

Charges DW

- Government contributory
- Relief – DAT, EUC, Disaster
- Requalification
- Rule of two affirmances
- Supplemental employment
- Sole purpose

Citations

Claim BS

- Backdate
- Cancellation
- CWC
- Monetary Eligibility
- Reemployment Services
- Retroactive

Decisions DW

- Decisions – OTR/Default
- Decisions – Writing

Disability/Reasonable Accommodation **DW**

Discharge/Misconduct (Disqualification)**RS**

General/Definition

Absenteeism **VS**

Current Act **RS**

Deferred Judgment/Alford Plea

Dependent Abuse – Adult

Dependent Abuse – Child **RS**

Drug Test – Federal **VS**

Drug Test – State

Drug Treatment

Fighting/Threats **JT**

Gross Misconduct

Harassment

Insubordination

Language/Verbal Abuse

License Revocation

Medical

Off-Duty Conduct

Requalification **LD**

Safety Rule

Sleeping on the Job

Suspension

Theft/Misappropriation

Union Activity

Work Performance/Trial Period

Employment

Evidence **NO**

General

Burden of Proof

Credibility

Hearsay

Polygraph

Privilege

Self-Incrimination

Federal **JE**

UCFE

UCX

Filing **SA**

Protests

Timeliness

Judicial Ethics **BH**

General

Ex Parte Communication

Recusal

Labor **NO**

Labor Disputes

Union/Collective Bargaining

Layoff **BS**

Miscellaneous

Monetary Eligibility **MM**

Dependents, High Qtr., 2d Benefit Yr

Orders **MM**

Overpayment/Payment **SW**

Benefit Deductions

Overpay – Double Affirmance

Overpay – Equitable Estoppel

Overpay – Waiver/Penalty

Retirement **NO**

Severance/Vacation/PTO

Procedure **JE**

Continuance/Postponement

Discovery

Due Process

Estoppel

Hearings

General

Opening Statement

Representation

Witnesses, Interpreters

Remands **BH**

Res Judicata

Statutory Construction

Withdrawal

Protective Orders **SW**

Requalification/Back Pay **BH**

Tax – E Contributions, Charges, SA

& Reimbursements

Income Tax Offset

Independent Kor/Employee

Successorship

Voluntary Quit (Disqualification) TN

General/Other

Abandonment

Change K of Hire

Disparate Treatment

Emergency

Forced Resignation

In Lieu of Discharge DL

Intolerable/Detrimental

Harassment

Medical

Work related

Non-work related RS

Pregnancy

FMLA

Other Employment

Part-Time/Supplemental DL

Resignation & Acceptance RS

Spouse

Temporary Employment

Working Conditions

Wages TH

Workers' Compensation MM

Work Refusal (Disqualification) TN

Message: FW: Default Form Decision**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862473
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Default Form Decision

From Lewis, Devon [IWD] **Date** Monday, March 24, 2014 11:24 PM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

From: Seeck, Vicki [IWD]
Sent: Tuesday, February 18, 2014 9:15 AM
To: Wise, Steve [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]
Subject: RE: Default Form Decision

Steve,

If you have two no call/no show cases and one of them is a timely appeal, would you recommend writing a decision on the appeal issue and then doing the other decision (overpayment) as a default or doing them both as a default.

Vicki

From: Wise, Steve [IWD]
Sent: Tuesday, February 18, 2014 8:50 AM
To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Subject: Default Form Decision

I have received some requests for the Default Form. It is attached. An earlier version may have had "Tracked changes" turned on. I have turned it off for this version. Let me know if there are problems with the form.

Steven A. Wise
 Administrative Law Judge
 515-281-3747

 BE GREEN - Please consider the environment before printing this e-mail

Message: FW: In person hearing procedure.

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:58 PM
 Item ID: 40862477
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: In person hearing procedure.

From Lewis, Devon [IWD] **Date** Tuesday, March 25, 2014 8:50 AM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

 [In Person tip sheet.docx](#) (75 Kb HTML)

From: Mormann, Marlon [IWD]
Sent: Friday, March 21, 2014 8:46 AM
To: Scheetz, Beth [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]
Subject: RE: In person hearing procedure.

Attached

Marlon Mormann
 Administrative Law Judge
 515 265 3512

From: Mormann, Marlon [IWD]
Sent: Friday, March 21, 2014 8:43 AM
To: Scheetz, Beth [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]
Subject: In person hearing procedure.

Comrades,

Attached is a final before sending to the local offices and placing in the desk manual. Please review before noon today with comments by line number. Thanks again.

Marlon Mormann
 Administrative Law Judge
 515 265 3512

In-person hearings tip sheet

LOCAL OFFICE PROCEDURE

1. Upon arrival ask the Administrative Law Judge for a business card and after hours contact information in case a party comes in late after the ALJ has left.
2. Inform the ALJ of the local office contact person's name, location and telephone numbers for computer and room setup help.
3. Ask for the hearing schedule if you don't have one and make a copy for the front desk personnel. Take appropriate precautions as this schedule has social security numbers.
4. When parties arrive early have parties wait outside of hearing room and the ALJ will call when ready.
5. If the hearing has started, escort the late arrival into the hearing room.
6. Inform local office personnel of the ALJ arrival and the opportunity to sit in on hearings. Enter and leave the room quietly if hearing is in progress.

Review local office security procedure with Administrative Law Judge in case of a hearing room threat. [R:\Desk Manual\IWD Offices' Safety & Security Policies](#)

- 7.
8. Keep your eyes open for troublesome behavior on the part of litigants.

ALJ IN PERSON HEARING PROCEDURE

1. See scheduling clerk a month prior to road trip to obtain file folders.
2. Examine each file to determine time needed for hearing. Call parties if necessary to discuss hearing time and witness participation. Carefully review one party cases to see if they can be resolved before scheduling.
3. Schedule cases based on travel time and hearing time. Give to scheduling clerk to schedule at least three weeks out to give Lawyer's time to fit into a schedule. Consider late filed cases, which can be fit in some 10 days before the road trip.
4. Make hotel reservations, double check for state rate. Do not believe the hotel as they may give discount saying it is a state rate that is not the same state rate allowed.
5. Obtain travel reimbursement form to complete as you travel rather than when you get back.
6. Make note of the local office field operations manager's name and number on your itinerary. Send email to the appropriate regional field operations manager(s) similar to the following:

"Dear Sara and Marla:

I am traveling to your offices to hear cases next week. The schedule is set forth below, (attached). Mason City on Monday and Ft Dodge Tuesday, Wednesday.

We are using a new hearing recording system that requires both a telephone and computer for recording the hearing.

I will bring a special speakerphone attachment for the telephone. I will need to know the telephone number in the hearing room, including the extension if there is one. If you give me that number, we can keep track of it for other ALJs traveling to Fort Dodge and Mason City, if the room used for hearings is always the same. If not, let me know that too and I will add that information to our in-person file. I need to make sure that I can connect the laptop to the Ethernet cable in the room as I cannot record the hearing without an internet connection.

Steven Wise is our tech support and can be reached at 515-473-2533, 515-281-3747 if you have any questions.

7. Obtain a Konftel telephone recording interface box with instructions. Steve Wise will have the Konftel or locate the last ALJ to make a road trip. Review instructions with a knowledgeable tech support person. Check to see if the one page instruction sheet is in the box.
8. Add the local office number to the clear 2 there my profile and **click update**. You must update your profile before the hearing start time otherwise you will need to manually edit at the time of hearing.
9. Remember that the Clear 2 There program does not allow calling of extension numbers when on a road trip. Review the clear 2 there 800 number procedure in case you have an extension number in the hearing room. On the hearing control screen click HO Call Systems (1 800). Click on your name and click dial. A pop up occurs with an 800 number and 7 digit pin. Then dial the 800 number and pin shown to initiate the call from the hearing room that has an extension. Make a test call and playback the recording before your first hearing to make certain you have connections and it is turned on properly. **It is imperative you test before the first hearing starts.**
10. We've had some situations in the office where C2T does not call the office phone when you dial yourself (or takes

forever). To handle this, just click on HO calls System, dial the 800 number, and when prompted, provide the pin.

11. Prepare your traveling office with reference codes and opening statement forms. Prepare your computer for travel with mouse and any other accessories. Bring paper, pens, stapler, calculator, exhibit stamp and other necessary supplies.

View current road conditions, weather and travel reports just prior to leaving. Always give yourself extra time. With the new recording system you generally need a minimum of 30 minutes set up time to get ready for your first hearing. Review the "Safety Security Policy" for that region which can be found in the desk manual. [R:\Desk Manual\IWD Offices' Safety & Security Policies](#)

- 12.
 13. Remind your clerk of your travel and telephone numbers.
 14. Upon arrival at the local office introduce yourself, provide your itinerary if necessary and contact information. Review security protocol even if they have none.
 15. Inform local office when you are finished with hearings.
 16. Offer to consult with and train local office personnel. "If I am not in hearing the help desk is open."
 17. After the last hearing of the week thank the office personnel for their hospitality. Remember to submit your expense report after you arrive home.
 18. Consider writing a thank you letter to the field operations manager expressing your gratitude. Add in things that might help in the future and reinforce positive experiences. If a serious deficit is observed, contact management and have them deal with it.
-

Message: FW: Draft #2, in person tip sheet. Ignore prior draft and use this one

Case Information:


Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:58 PM
Item ID: 40862478
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **FW: Draft #2, in person tip sheet. Ignore prior draft and use this one**

From Lewis, Devon [IWD] **Date** Tuesday, March 25, 2014 9:16 AM
To Koonce, Kerry [IWD]
Cc Hillary, Teresa [IWD]

 [In Person tip sheet.docx](#) (24 Kb HTML)

From: Mormann, Marlon [IWD]
Sent: Thursday, March 13, 2014 1:18 PM
To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, Bonny [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Hillary, Teresa [IWD]
Subject: Draft #2, in person tip sheet. Ignore prior draft and use this one

This is updated with your suggestions. Review and advise, my dear Comrades.

Marlon Mormann
Administrative Law Judge
515 265 3512

In-person hearings tip sheet

LOCAL OFFICE PROCEDURE

1. Upon arrival ask the Administrative Law Judge for a business card and after hours contact information in case a party comes in late after the ALJ has left.
2. Inform the ALJ of the local office contact person's name, location and telephone numbers for computer and room setup help.
3. Ask for the hearing schedule if you don't have one and make a copy for the front desk personnel. Take appropriate precautions as this schedule has social security numbers.
4. When parties arrive early have parties wait outside of hearing room and the ALJ will call when ready.
5. If the hearing has started, escort the late arrival into the hearing room.
6. Inform local office personnel of the ALJ arrival and the opportunity to sit in on hearings. Enter and leave the room quietly if hearing is in progress.
7. Review local office security procedure in case of a hearing room threat.
8. Keep your eyes open for troublesome behavior on the part of litigants.

ALJ IN PERSON HEARING PROCEDURE

1. See scheduling clerk a month prior to road trip to obtain file folders.
2. Examine each file to determine time needed for hearing. Call parties if necessary to discuss hearing time and witness participation. Carefully review one party cases to see if they can be resolved before scheduling.
3. Schedule cases based on travel time and hearing time, give to scheduling clerk to schedule at least three weeks out to give Lawyer's time to fit into a schedule. Consider late filed cases, which can be fit in some 10 days before the road trip.
4. Make hotel reservations.
5. Obtain travel reimbursement form to complete as you travel rather than when you get back.
6. Make note of the local office field operations manager's name and number on your itinerary. Send email to the appropriate regional field operations manager(s) similar to the following:

"Dear Sara and Marla:

I am traveling to your offices to hear cases next week. The schedule is set forth below, (attached). Mason City on Monday and Ft Dodge Tuesday, Wednesday.

We are using a new hearing recording system that requires both a telephone and computer for recording the hearing.

I will bring a special speakerphone attachment for the telephone. I will need to know the telephone number in the hearing room, including the extension if there is one. If you give me that number, we can keep track of it for other ALJs traveling to Fort Dodge and Mason City, if the room used for hearings is always the same. If not, let me know that too and I will add that information to our in-person file. I need to make sure that I can connect the laptop to the Ethernet cable in the room as I cannot record the hearing without an internet connection.

Steven Wise is our tech support and can be reached at 515-473-2533, 515-281-3747 if you have any questions.

7. Obtain a Konftel telephone recording interface box with instructions. Steve Wise will have the Konftel or locate the last ALJ to make a road trip. Review instructions with a knowledgeable tech support person.
8. Add the local office number to the clear 2 there my profile and **click update**. You must update your profile before hearing start time otherwise you will need to edit on the day of hearing.
9. Review the clear 2 there 800 number procedure in case you have an extension number in the hearing room.
10. Prepare your traveling office with reference codes and opening statement form. Prepare your computer for travel with mouse and any other accessories. Bring paper, pens, stapler, calculator, exhibit stamp and other necessary supplies.
11. View current road conditions, weather and travel reports just prior to leaving.
12. Remind your clerk of your travel and telephone numbers.
13. Upon arrival at the local office introduce yourself, provide your itinerary if necessary and contact information. Review security protocol even if they have none.
14. Inform local office when you are finished with hearings.
15. Offer to consult with and train local office personnel. "If I am not in hearing the help desk is open."
16. After the last hearing of the week thank the office personnel for their hospitality. Submit your expense report the day after you arrive home for early reimbursement.
- 17.