

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK H DILLAVOU**  
Claimant

**APPEAL NO. 14A-UI-10392-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/06/14  
Claimant: Appellant (4)**

Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

Patrick Dillavou filed a timely appeal from the September 26, 2014, reference 03, decision that he was overpaid \$231.00 for five weeks between April 12, 2014 and September 20, 2014, based on a redetermination of his benefit eligibility on September 24, 2014. After due notice was issued, an in-person hearing was held in Mason City on October 27, 2014. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-10391-JT. Mr. Dillavou participated. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits A and B and Department Exhibits D-1, D-2 and D-3 into evidence.

**ISSUES:**

Whether the claimant was overpaid \$231.00 for five weeks between April 12, 2014 and September 20, 2014.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Patrick Dillavou voluntarily quit part-time employment with employer Superior Wash, Inc., (employer account number 290277) on February 14, 2014. Mr. Dillavou had other employment with Plastic Injection Molders (employer account number 197923) and continued with that other employment after separating from Superior Wash. Superior Wash and Plastic Injection Molders are Mr. Dillavou's only base period employers for purpose of the claim for benefits that Mr. Dillavou established effective April 6, 2014.

When Mr. Dillavou established his claim for benefits, Workforce Development used Mr. Dillavou's wages from the two base period employers to determine that Mr. Dillavou's weekly benefit amount at \$129.00. On April 10, 2014, Iowa Workforce Development mailed a monetary record to Mr. Dillavou that included the base period wages from the two base period employers and the \$129.00 weekly benefit amount.

In connection with the claim year that was effective April 6, 2014, Mr. Dillavou received benefits that included benefits for the following four weeks. For the week ending April 12, 2014,

Mr. Dillavou reported zero wages and received \$129.00 in benefits. For the week ending April 19, 2014, Mr. Dillavou reported zero wages and received \$129.00 in benefits. For the week ending April 26, 2014, Mr. Dillavou reported \$92.00 in wages and received \$69.00 in benefits. For the week ending August 23, 2014, Mr. Dillavou reported zero wages and received \$129.00 in benefits.

On September 24, 2014, an Iowa Workforce Development claims deputy entered a reference 02 decision. That decision disqualified Mr. Dillavou for benefits based on wage credits from part-time employment with Superior Wash, Inc., but that allowed reduced benefits based on the other base period employment provided Mr. Dillavou met all other eligibility requirements. The decision had also relieved Superior Wash, Inc., of liability for benefits. The disqualification remained in place until Mr. Dillavou had worked in and been paid wages for insured work equal to ten times his then weekly benefit amount of \$129.00. The reference 02 decision has been affirmed on appeal. See Appeal Number 14A-UI-10391-JT.

On September 25, 2014, Iowa Workforce Development mailed a corrected monetary notice to Mr. Dillavou. That monetary notice reflected the removal from the wages and wage credits from the Superior Wash employment. The monetary record provided \$75.00 as the redetermined weekly benefit amount based on the base period wages from Plastic Injection Molders. The base period consisted of the four quarters of 2013. Mr. Dillavou's highest earnings base period quarter was the fourth quarter of 2013, when he had \$1,743.00 in wages from Plastic Injection Molders. Mr. Dillavou had reported zero dependents when he had established his claim for benefits and the monetary record reflected that information.

The redetermination of the weekly benefit amount prompted the September 26, 2014, reference 03, overpayment decision from which Mr. Dillavou has appealed in this matter. In light of the redetermination and reduction of the weekly benefit amount, the claims deputy concluded that Mr. Dillavou was only eligible for \$75.00 in benefits for the weeks ending April 12, April 19 and August 23, 2014 and had been overpaid \$54.00 in benefits for each of those weeks. For the week ending April 26, 2014, because Mr. Dillavou's \$92.00 in reported wages exceeded the redetermined \$75.00 weekly benefit amount by more than \$15.00, the claims deputy concluded that Mr. Dillavou had been overpaid \$69.00 for that week. The claims deputy calculated the total overpayment amount for the four weeks in question to be \$231.00.

Mr. Dillavou's 2014 wages from Plastic Injection Molders have been as follows. For the first quarter of 2014, the employer reported \$805.00 in wages for Mr. Dillavou. For the second quarter of 2014, the employer reported \$1,650.00 in wages for Mr. Dillavou. For the third quarter of 2014, the employer reported \$1,249.00 in wages for Mr. Dillavou.

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

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is subsequently deemed ineligible for the benefits, the claimant must repay the benefits, and Workforce Development must recover the benefits, even if the claimant was not at fault in receiving the benefits.

Iowa Code section 96.3(4) provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in

insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage.
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in § 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

The claims deputy followed the requirements of the statute when redetermining Mr. Dillavou's new weekly benefit amount. The claims deputy took the high quarter base period wages (\$1,743.00) and divided that amount by 23 to arrive at the \$75.00 weekly benefit amount.

Mr. Dillavou received the benefits in question. The disqualification decision that prompted the redetermination of the weekly benefit amount has been affirmed on appeal. The redetermined weekly benefit amount was accurate. At the time Mr. Dillavou received benefits for the weeks ending April 12, 19 and 26, 2014, he had not yet requalified for benefits. However, at the time, Mr. Dillavou received benefits for the week ending August 23, 2014, he had requalified for benefits by earning the requisite amount after separating from Superior wash. For all these reasons, the administrative law judge concludes that Mr. Dillavou was overpaid \$177.00 in benefits for the three-week period ending April 26, 2014. The administrative law judge also concludes that the claimant was not overpaid benefits for the week ending August 23, 2014.

**DECISION:**

The September 26, 2014, reference 03, decision is modified as follows. The claimant was overpaid \$177.00 in benefits for the three-week period ending April 26, 2014. The claimant was not overpaid benefits for the week ending August 23, 2014.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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