

IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
DIVISION OF ADMINISTRATIVE HEARINGS  
Lucas State Office Building  
Des Moines, Iowa 50319

**Appeal Number:** 06-IWDUI-216  
**OC:** 03/5/06  
**Claimant:** Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**JOHN R PAGE**  
**2006 S THIRD AVENUE PALCE**  
**MARSHALLTOWN IA 50158-5221**

**STATE CLEARLY**

**IOWA WORKFORCE DEVELOPMENT**  
**QUALITY CONTROL**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

**THOEDORE T HOGLAN ATTORNEY**  
**CONDON & HOGLAN**  
**2648 REED AVENUE**  
**MARSHALLTOWN IA 50158**

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department . If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

DAN ANDERSON, IWD

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(Administrative Law Judge)

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December 29, 2006

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(Decision Dated & Mailed)

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**Section 96.3-7 - Recovery of Overpayments**

**STATEMENT OF THE CASE:**

The claimant filed an appeal from an Iowa Workforce Development decision dated November 21, 2006, reference 04, which held that the claimant was overpaid unemployment benefits in the amount of \$5,549.00, because he failed to report his pension pay during a 32-week period from April 2, 2006 to November 11, 2006 according to the department decision dated November 17, 2006..

After due notice was issued, a hearing was held by telephone conference call on December 27,

2006. The claimant, and his Attorney, Ted Hoglan, participated. Iowa Workforce Development, Quality Control, participated by Michelle Andre, Manager.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness, and having examined all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits with an effective date of March 5, 2006. After Quality Control conducted a random audit review, the department issued a decision dated November 17, 2006 that the claimant's private pension pay is fully deductible from his receipt of unemployment benefits with the effective date of his claim. The department decision has now been affirmed (See Appeal #06-IWDUI-215).

The claimant failed to report his \$775 monthly pension pay prorated to a weekly amount of \$179 during a thirty-two week period from the week ending April 8, 2006 through the week ending November 11, 2006. The claimant also failed to report his earnings from his employment with Frank Lewis Glick Post (American Legion), and the Marshalltown Community Schools, for a twenty-nine week period. According to the department procedure, the employment earnings was first applied to the claimant's unemployment claims for the period from April 9, 2006 to the week ending October 28, 2006 that caused an overpayment totaling \$677. The department then applied the claimant's prorated weekly pension of \$179 for the thirty-two week period that caused an overpayment of \$5,549.

The claimant did not offer any testimony in the hearing to refute the evidence relied upon by Quality Control to determine the amounts of the overpayment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant is overpaid benefits \$5,549.00.

**Iowa Code Section 96.3-7 provides:**

7. Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

If the division 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 administrative law judge concludes that the claimant is overpaid benefits \$5,549.00 for the 32-week period ending November 11, 2006 pursuant to Iowa Code Section 96.3-7. The claimant did not offer any evidence to refute the department determination of the overpayment.

**DECISION:**

The decision of the representative dated November 21, 2006, reference 04, is **AFFIRMED**. The

claimant is overpaid benefits \$5,549.00 due to receiving pension pay.

rls