

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**GREGORY GILLIP**  
**14876 WASHINGTON RD**  
**TRAILER 178**  
**WEST BURLINGTON, IA 52655-8677**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS & RECOVERY**  
**JONATHAN LINNENBRINK**

JOE WALSH, IWD

**Appeal Number: 12IWDUI195**  
**OC: 12/12/10**  
**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 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.

STATE CLEARLY

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

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

---

(Administrative Law Judge)

---

July 6, 2012

---

(Decision Dated & Mailed)

---

## STATEMENT OF THE CASE

Gregory Gillip filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated March 29, 2012, reference 04. In this decision, the Department determined that Gillip was overpaid \$4,073 in unemployment insurance benefits for the time period between January 16 and July 2, 2011. The decision states that the overpayment resulted from the claimant failing to report wages earned with New Choices Incorporated and Iowa Home Based Services.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on April 23, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on April 25, 2012. On June 1, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Jonathan Linnenbrink represented the Department and

presented testimony. Exhibits 1 through 14 were submitted by the Department and admitted into the record as evidence. The Appellant was provided instructions to participate in the hearing, but did not call in to do so. The hearing was held in his absence.

### **ISSUE**

Whether the Department correctly determined that the Appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.

### **FINDINGS OF FACT**

Gregory Gillip filed a claim for unemployment benefits with an effective date of December 12, 2010. Gillip made claims for and received unemployment benefits during the first and second quarters of 2011.

The Department conducted an audit of Gillip's claim for the first and second quarters of 2011. Two employers reported that Gillip earned wages through employment during those quarters: New Choices Incorporated and Iowa Home Based Services LLC. When making claims for those weeks, the amounts reported by Gillip differed from those reported by the employers. Gillip's weekly benefit amount during this time period was \$345. (Exh. 1-6).

After comparing the amounts reported by Gillip, the amounts reported by his employers, the benefits that he received, and the benefits to which he was entitled during each of the weeks in question, the Department determined that Gillip was overpaid a total of \$4,073. (Exh. 5-6). After determining the discrepancy between the amounts reported by Gillip and his employers, the Department sent Gillip a preliminary audit notice on March 7, 2012. The notice advised Gillip of the discrepancy and offered him the opportunity to respond to the Department regarding the potential overpayment. (Exh. 7).

On March 19, 2012, investigator Jonathan Linnenbrink spoke with Gillip by phone regarding the potential overpayment. Gillip indicated that several things about his employment during the time period in question made recording and reporting his wages accurately difficult. First, he was on a part-time schedule, which was printed weekly but that would often change at the last minute. Additionally, Gillip had at least four different pay rates based on his job duties and location. (Exh. 8).

On March 29, 2012, the Department issued a decision to Gillip notifying him that he was overpaid in the amount of \$4,073. (Exh. 9). The Department determined that Gillip's underreporting of wages was a good faith error and did not classify the overpayment as occurring as a result of misrepresentation. (Linnenbrink testimony).

Gillip appealed the Department's overpayment decision. In his appeal letter, Gillip does not dispute the Department's calculation of the overpayment. Gillip asserts in the letter that his employers' scheduling practices made tracking hours worked very difficult, therefore he believes his employers should be at least partially responsible for the amount of overpayment. (Exh. 10).

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

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.<sup>1</sup>

The evidence in this case supports the Department's conclusion that Gillip incorrectly reported wages during the weeks in question. The Department's evidence regarding Gillip's gross earnings during the weeks in question is credible. Gillip did not dispute the Department's calculation of the overpayment in his appeal of the decision, nor did he appear at hearing to dispute the figure.

While Gillip argued in his appeal letter that his employer's scheduling practices made it difficult for him to report his wages accurately, the reporting of wages is the employee's responsibility in the unemployment insurance context. There is no provision in the law or the Department's regulations that would shift responsibility – either full or partial – to an employer if an employee has difficulty accurately keeping track of hours worked and wages earned.

Under the circumstances presented here, the Department's decision that Gillip was overpaid must be affirmed.

### **DECISION**

Iowa Workforce Development's decision dated March 29, 2012, reference 04, is **AFFIRMED**. The claimant has been overpaid benefits in the amount of \$4,073. The Department shall take any action necessary to implement this decision.

lel

---

<sup>1</sup> Iowa Code § 96.3(7)(a) (2011).