

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

**Appeal Numbers: 11IWDUI136-138**  
**OC: 05/30/10**  
**Claimant: Appellant (1)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**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.

**JAVIER DAVILA MERCADO**  
**316 GUMWOOD ST.**  
**CORRECTIONVILLE, IA 51016**

STATE CLEARLY

**INVESTIGATIONS AND RECOVERY, IWD**  
**ATTN: IRMA LEWIS**  
**150 DES MOINES STREET**  
**DES MOINES, IA 50309**

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.

JOE WALSH, IWD

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(Administrative Law Judge)

July 28, 2011

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(Decision Dated & Mailed)

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Iowa Code section 96.5(2)(a) – Discharge Based on Misconduct<sup>1</sup>  
Iowa Code section 96.5(1) – Voluntary Quit without Good Cause  
Iowa Code section 96.3-7 – Recovery of Overpayment Benefits  
Iowa Code section 96.16-4 – Misrepresentation

### **STATEMENT OF THE CASE**

Claimant Javier Davila Mercado filed an appeal from three decisions issued by Iowa Workforce Development (“IWD”), references 05, 06, and 07. In reference 05, dated April 5, 2011, IWD found Mercado was not eligible to receive unemployment insurance benefits because he voluntarily quit his employment on December 3, 2010, for personal reasons without good cause attributable to his employer. In reference 06, dated April

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<sup>1</sup> While discharge for misconduct was certified by IWD for hearing, none of the decisions reference misconduct. Mercado’s employer reported to IWD he voluntarily left his employment and obtained employment with another employer. Misconduct was not an issue addressed at hearing.

22, 2011, IWD found Mercado was overpaid \$5,671.35 for 23 because he failed to report wages earned with Anna Enterprises, and that the overpayment was due to misrepresentation. In reference 07, dated April 22, 2011, IWD found Mercado was overpaid \$3,696 because of a decision disqualifying him from receiving unemployment insurance benefits because he voluntarily left his employment from Anna Enterprises.

IWD transmitted the cases to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the administrative files to Mercado.

On July 27, 2011, a contested case hearing was held before Administrative Law Judge Heather L. Palmer at 10:00 a.m. Mercado did not appear. His copy of the Notice of Telephone Hearing was not returned as undeliverable mail. Irma Lewis appeared on behalf of IWD. I waited five minutes before proceeding with the hearing. Lewis testified on behalf of IWD. Exhibits 1 through 9 were admitted into the record.

### **ISSUES**

Whether IWD was correct in finding the Claimant left work voluntarily without good cause.

Whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.

Whether IWD correctly determined the overpayment was a result of misrepresentation.

### **FINDINGS OF FACT**

Mercado received unemployment insurance benefits in 2010. IWD received information that Mercado was employed with Anna Enterprises while he was receiving unemployment insurance benefits. Mercado did not report any earnings to IWD.

When IWD contacted Anna Enterprises, Anna Enterprises informed IWD Mercado left his employment with Anna Enterprises on December 3, 2010. According to Anna Enterprises, Mercado reported he had to leave his assignment and the country for a couple of weeks. Assistant Manager Katherine Drulenga contacted Mercado on December 21, 2010 to find out Mercado's status. Mercado reported he found a job with another employer. Mercado continued to receive unemployment insurance benefits through March 2011. IWD found that since Mercado voluntarily left his employment with Anna Enterprises, he was disqualified from receiving unemployment insurance benefits from the date of his voluntary quit forward. IWD also sought to recover the unemployment insurance benefits he received.

Mercado contacted Lewis by telephone and reported he never worked for Anna Enterprises. Mercado did not report working for any other employer during the period in question. Lewis contacted Anna Enterprises and verified Anna Enterprises received a social security card and driver's license from Mercado when it hired him. Lewis also researched Mercado's social security number to see if he had earnings from another

employer. Lewis determined Mercado did not have earnings from any other employer in the United States during the period when Anna Enterprises reported Mercado was employed. Mercado did not appear at hearing to explain his position.

Mercado's weekly benefit amount was \$264. IWD examined whether Mercado received earnings exceeding his weekly benefit amount plus \$15, or \$279. IWD found that for the weeks ending June 12, 2010 through October 23, 2010, and November 6, 2010 through December 4, 2010, Mercado received earnings exceeding \$279. IWD determined he was not entitled to any unemployment insurance benefits for the weeks in question.

For the week ending June 5, 2010, IWD found Mercado received wages of \$221, and for the week ending October 30, 2010, IWD found Mercado received wages of \$239. IWD determined Mercado was partially unemployed. Mercado received \$264 in unemployment insurance benefits each week. For the week ending June 5, 2010, IWD concluded Mercado received an overpayment of \$155, and for the week ending October 30, 2010, IWD concluded Mercado received an overpayment of \$173.

IWD found Mercado continued to receive \$264 per week unemployment benefits after he voluntarily left his employment with Anna Enterprises.

## REASONING AND CONCLUSIONS OF LAW

### I. Overpayment – Failure to Report Wages

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.<sup>2</sup> IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.<sup>3</sup>

An individual is totally unemployed in any week the individual has no payable wages.<sup>4</sup> An individual is deemed partially unemployed when the individual works less than the individual's regular full-time week and earns less than the individual's weekly benefit, plus \$15.<sup>5</sup>

Mercado's weekly benefit amount was \$264. \$264 plus \$15 is \$279. For the weeks ending June 12, 2010 through October 23, 2010, and November 6, 2010 through December 4, 2010, Mercado received earnings exceeding \$279. Therefore, IWD correctly determined he was not entitled to any unemployment insurance benefits.

For the weeks ending June 5, 2010 and October 30, 2010, Mercado received wages of less than \$279, and was partially unemployed. When an individual earns less than the

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<sup>2</sup> Iowa Code § 96.3(7).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 96.19(38)a.

<sup>5</sup> *Id.* § 96.19(38)b(1).

individual's weekly benefit amount plus \$15, "the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount."<sup>6</sup> One-fourth of Mercado's weekly benefit amount is \$66.

For the week ending June 5, 2010, Mercado received \$221 in earnings. Subtracting \$66 from \$221 is \$155. Deducting \$155 from his weekly benefit amount of \$264 is \$109. Because Mercado was only entitled to receive \$109 in unemployment insurance benefits, he received an overpayment of \$155.

For the week ending October 30, 2010, Mercado received wages of \$239. Subtracting \$66 from \$239 is \$173. Deducting \$173 from his weekly benefit amount of \$264 is \$91. Because Mercado was only entitled to receive \$91 in unemployment insurance benefits, he received an overpayment of \$173.

The record reflects Mercado received a total overpayment of \$5,671.35 when he failed to report earnings from Anna Enterprises from June 2010 through July 2010 and August 2010 through December 4, 2010.

## **II. Misrepresentation**

IWD determined the above overpayments occurred because of misrepresentation. If an individual, by reason of a nondisclosure or misrepresentation receives unemployment benefits, IWD may either deduct the overpayment amount from any future benefits payable to the individual or seek repayment directly from the individual.<sup>7</sup>

IWD contacted Mercado regarding the alleged overpayments. He reported he did not work for Anna Enterprises. IWD investigated and determined Anna Enterprises had received a copy of Mercado's social security card and driver's license. IWD researched the earnings history for Mercado's social security number and determined he did not have earnings for another employer in any other state during the time Anna Enterprises reported he was working. Mercado did not appear at hearing to explain his position or submit any other documentary evidence showing he did not work for Anna Enterprises. IWD's decision should be affirmed.

## **III. Voluntary Quit**

If an individual leaves employment voluntarily, without good cause attributable to the employer, the individual is disqualified from receiving unemployment insurance benefits.<sup>8</sup> IWD's rules define a voluntary quit as "discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated."<sup>9</sup>

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<sup>6</sup> 871 IAC 24.18.

<sup>7</sup> Iowa Code § 96.16(4).

<sup>8</sup> *Id.* § 96.5(1).

<sup>9</sup> 871 IAC 24.25.

The record reflects that on December 3, 2010 Mercado contacted Anna Enterprises and reported he had to leave his assignment and the country for a few weeks. When Anna Enterprises contacted him on December 21, 2010, Mercado reported he had found another position with a different employer. Mercado did not appear at hearing to contest this allegation. IWD correctly found he was disqualified from receiving unemployment insurance benefits.

#### **IV. Overpayment Due to Voluntary Quit**

As noted above, when IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.<sup>10</sup>

Mercado received unemployment insurance benefits of \$3,696 after he left his employment with Anna Enterprises. Because IWD correctly found Mercado was disqualified from receiving unemployment insurance benefits following his voluntary quit from Anna Enterprises, Mercado received unemployment insurance benefits he was not entitled to receive. IWD has established an overpayment of \$3,696.

### **DECISION**

IWD's decisions, reference 05, dated April 5, 2011, and references 06 and 07, dated April 22, 2011 are AFFIRMED.

hlp

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<sup>10</sup> Iowa Code § 96.3(7) (2009).