

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

**Appeal Number: 07-IWDUI-091**  
**OC: 08/06/06**  
**Claimant: Appellant (4)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**MICHAEL H SCHULDES**  
**12863 WHISPERING RDG**  
**DUBUQUE IA 52002-9780**

**CLARK COLLEGE**  
**KIM KOPPLIN HR DIRECTOR**  
**% PAYROLL DEPARTMENT MS 1742**  
**1550 CLARK DRIVE**  
**DUBUQUE IA 52001**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATION AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

CHRISTOPHER M SOPPE ATTORNEY  
BLAIR & FITZSIMMONS PC  
850 WHITE STREET  
DUBUQUE IA 52001-7035

DAN ANDERSON, IWD

**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.

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 20, 2007

---

(Decision Dated & Mailed)

---

Section 96.5-5-c – Other Compensation/Periodic Payments  
871 IAC 2413(3)e – Deductible Payments from Benefits/Periodic Payments  
Section 96.5-1-d – Voluntary Quit/Illness  
Section 96.16-4 - Misrepresentation  
Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated June 1, 2007, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$9,360.00, because he failed to report disability payments from his former employer's disability insurance policy for the period from August 27, 2006 to February 24, 2007.

After due notice was issued, a hearing was scheduled for a telephone conference call on July 17, 2007. The claimant, and his Attorney, Christopher Soppe, participated. Tom Carnahan, Investigator, participated for Iowa Workforce Development, Investigation and Recovery. Kim Kopplin, HR

Director, participated for Clark College. Department Exhibit One and Claimant Exhibit A were received as evidence for the record.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of August 6, 2006. The claimant last worked for his former employer, Clark College, as an Assistant Professor, at the end of the fall term in December 2005.

The claimant began working for Clark College on January 16, 2005. In January 2006, the claimant received a notice from the College that he would not be retained for employment in the next term. When the employer received the claimant's notice of claim in August 2006, it protested his claim for benefits. Initially, the department allowed the protest, but later, the decision was reversed. The College sent the claimant a letter that he was terminated effective April 11, 2006. The department determined that the discharge was for no disqualifiable reason, and unemployment benefits were allowed.

The claimant claimed for and received weekly unemployment benefits of \$360 for a twenty-six week period beginning August 27, 2006, and ending February 24, 2007. The total benefits paid to the claimant were \$9,360 for the period.

Since Clark College is a reimbursable employer for unemployment tax purposes, the department mailed a billing statement to the College dated January 15, 2007 that requested payment for unemployment benefits paid to the claimant (\$4,676) and other named former employees. HR Director Ernst responded to the billing statement by questioning unemployment benefits paid to the claimant during the period he was receiving disability payments from its insurance provider, and she provided copies of the disability payment record(s). The department assigned Investigator Carnahan to review the disability payment/unemployment benefit issue.

Carnahan received information from the College that its insurance provider, UnumProvident, approved the claimant's long term disability claim on October 30, 2006 due to major depression/anxiety disorder, and he was eligible for disability effective February 14, 2006. The provider made a lump sum payment of \$23,664.00 for the period from February 14, 2006 to October 13, 2006, and awarded a monthly payment of \$2,958 beginning November 14, 2006. The claimant continues to receive the monthly disability payment through the date of this hearing.

After reviewing the provider long term disability insurance plan, Carnahan noted that Clark College payment one hundred percent of the cost of coverage. The plan defines disability as you are limited from performing the material and substantial duties of your regular occupation due to sickness or injury, and you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury. The claimant's professor salary ranged from about \$48,000 to \$50,000 prior to his disability.

Carnahan further noted that the plan paid an insured sixty percent of his basic monthly earnings reduced by certain other income benefits such as Social Security, State Disability, Worker's Compensation and Pension. The provider disability payments made to the claimant contain notes that request documentation on any other income benefits that he may receive that may reduce the long term disability claim.

Carnahan reviewed the claimant's disability claim application to the provider where he states that he

is disabled from performing the duties of his occupation (professor). Carnahan considered that the claimant is an educated individual (doctorate degree) that should have a greater understanding of the unemployment system and the provider disability plan than an average individual, such that he should have reported the award of disability to the department. When the claimant called in his unemployment claim for each of the twenty-six weeks at issue, he answered yes to the question that he was able and available for work. The department voice response system does not inquire whether any benefit applicant is receiving disability and/or any similar income benefit.

During the hearing, the claimant offered that his initial application for disability was denied, and he did not learn that his claim had been approved until shortly before he received the lump sum disability payment dated October 30, 2006. The claimant performed some online adjunct teaching work through the University of Maryland prior to the approval of his unemployment claim that was the basis for him answering yes to the question whether he was able and available for work. The department did not question the claimant's pursuit of prospective employment by sending resumes as job searches each week during the period of his unemployment.

In reviewing department law and rules, Carnahan concluded that the provider disability payments to the claimant are deductible from unemployment benefits, and should have been reported by the claimant when claiming for unemployment benefits once he learned of the award. Carnahan multiplied the monthly disability payment (\$2,958) times twelve months, and divided it by fifty-two weeks to determine the weekly amount (\$683) the claimant should have reported. Since the disability weekly payment exceeded the benefit entitlement (\$360), the claimant was overpaid benefits for each of the twenty-six weeks he claimed for a total of \$9,360.00. Carnahan reasoned the claimant misrepresented his unemployment claim(s) by stating that he was able and available for work, and withholding from the department that he was receiving disability payments, and from the provider, unemployment benefits.

#### REASONING AND CONCLUSIONS OF LAW:

*The primary issue is whether the claimant's disability payments are deductible from unemployment benefits.*

#### **Iowa Code Section 96.5-5 provides:**

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period employer or chargeable employer where, ... , the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment.

**871 IAC 24.13(1) Procedures for deducting payments from benefits.** Any payment defined under subrules 24.13(2),(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted. If the individual or the employer does not designate the period to which the amount applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which

the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period.

**871 IAC 24.13.(3) Fully deductible payments from benefits.** The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

- e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced by that portion of the payment which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

The administrative law judge concludes that the claimant's disability payments are fully deductible from his unemployment benefits for the period from August 27, 2006 to February 24, 2007 pursuant to the law sections cited above. The department established that the claimant's employer paid one hundred percent of the cost of the long term disability coverage, and as a chargeable employer, should be given relief from the claimant's receipt of the disability payments (periodic payment made under a plan maintained and contributed by a chargeable employer) that exceeded his weekly unemployment benefit.

*A further issue is whether the claimant is overpaid benefits \$9,360, and if so whether it is the result of misrepresentation.*

**Iowa Code Section 96.16-4 provides:**

4. Misrepresentation. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

**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 further concludes that the claimant is overpaid benefits \$9,360 for the twenty-six week period ending February 24, 2007 pursuant to Iowa Code section 96.3-7. The department's conclusion the claimant misrepresented his claim is not supported by the evidence in this record. Investigator Carnahan conceded the claimant could not be held accountable to report the disability until he received notice of the award that was in late October 2006, some thirteen weeks or so after he filed his unemployment claim. The department's voice response/claim system is not designed to elicit from a claimant whether he is receiving a disability payment and/or any similar type of payment that would put on notice even an educated individual that it should be reported. The claimant's affirmative response that he was able and available for work based on a track record of online adjunct teaching just prior to his filing for benefits, and department approved resume job searches is reasonable given the circumstances of the unemployment claim. The department would not have known about the disability payment scenario had the employer failed to disclose it.

While the claimant is well educated, he is suffering from a significant emotional illness that gives rise to his disability to the extent he cannot perform the duties of his regular occupation, such that it is reasonable to assume that his mental capacity to grasp even the more important affairs of life, may be impaired. The claimant reasoned that he was entitled to the provider disability, because he could not perform the duties of an on campus college professor, but able and available for online teaching duties that became the focus of his job searches, such that he could receive unemployment.

The department decision raised an issue regarding a separation from employment as a voluntary quit due to illness with a failure to recover and return to work. The employer representative and claimant agreed the separation from employment was a termination/discharge, such that this is not an issue that affects this matter.

#### DECISION:

The decision of the representative dated June 1, 2007, reference 03, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$9,360.00 pursuant to Iowa Code sections 96.5-5-c, and 96.3-7, for a twenty-six week period ending February 24, 2007, due to the receipt of provider disability payments attributable one hundred percent to a chargeable employer, but it is NOT due to misrepresentation.

rls