

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

**Appeal Number:** 09-IWDUI-090  
**OC:** 01/27/08  
01/25/09  
**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 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.

**MARY A. TIMMERMAN**  
**202 3<sup>RD</sup> ST. #151**  
**OAKVILLE, IA 52646-4700**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATION AND RECOVERY  
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.

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)

May 28, 2009

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(Decision Dated & Mailed)

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Section 96.16-4 - Misrepresentation  
Section 96.3-7 - Recovery of Overpayments

### CHRONOLOGY

**April 22, 2009** – Iowa Workforce Development issued its decision, reference 01, holding Mary A. Timmerman was overpaid unemployment benefits in the amount of \$1865.78 for the period from March 16, 2008 through May 10, 2008 based on her failure to report earnings from the Oakville Tap. The decision further held the overpayment of benefits was due to misrepresentation on Ms. Timmerman's part.

**May 4, 2009** – Iowa Workforce Development, Appeals Section, received Ms. Timmerman's appeal.

**May 7, 2009** – Iowa Workforce Development transferred jurisdiction of Ms. Timmerman's appeal to the Department of Inspections and Appeals for the purpose of holding a contested case hearing.

**May 8, 2009** – The Department of Inspections and Appeals issued a Notice of Telephone Hearing to be held on May 22, 2009.

**May 22, 2009** – Hearing was held in this matter by way of telephone conference call.

### **STATEMENT OF THE CASE**

Claimant Mary A. Timmerman filed an appeal from an Iowa Workforce Development decision dated April 22, 2009, reference 01, which held Ms. Timmerman had been overpaid unemployment benefits in the amount of \$1865.78, because she failed to report wages earned with the Oakville Tap during the weeks between March 16, 2008 and May 10, 2008. The decision also held the overpayment was due to misrepresentation on Ms. Timmerman's part.

A hearing was scheduled by way of telephone conference call on May 22, 2009. Ms. Timmerman appeared and participated on her own behalf. Tom Carnahan, an investigator for Iowa Workforce Development, appeared and participated on behalf of the department.

### **FINDINGS OF FACT**

Mary A. Timmerman filed a claim for unemployment benefits with an effective date of January 27, 2008. Because she continued to receive benefits during the second quarter of 2008 while an employer was reporting earnings paid to her during that same period, an audit was commenced.

The Oakville Tap reporting that Ms. Timmerman earned the following wages during the period in question:

<b>Week Ending</b>	<b>Wages</b>
04/05/08	\$ 330.00
04/12/08	290.00
04/19/08	280.00
04/26/08	320.00
05/03/08	265.00
05/10/08	195.00

Additionally, the Oakville Tap reported it paid earnings of \$625 to Ms. Timmerman during the first quarter of 2008. The department determined she earned \$330.00 for both the week ending March 22, 2009 and the week ending March 29, 2008.

Ms. Timmerman failed to report any wages for any of the weeks set forth above.

Based on Ms. Timmerman's reports to the department that she was not working during the weeks between March 16, 2008 and May 10, 2008, she received unemployment benefit payments in the amount of \$291.00 for each of the seven weeks between March 16, 2008 and May 3, 2008. Ms. Timmerman also received an unemployment benefit payment for the week ending May 10, 2008 in the amount of \$250.78. Thus, for the period in question, Ms. Timmerman received total benefits in the amount of \$2,287.78.

Based on the earnings information provided by the Oakville Tap, Ms. Timmerman was entitled to no benefits during the weeks ending March 22, March 29, and April 5, 2008. She was entitled to benefits of only \$73.00 for the week ending April 12, 2008 and \$83.00 for the week ending April 19, 2008. Ms. Timmerman was not entitled to any benefits for the week ending April 26, 2008. She was entitled to benefits in the amount of \$98.00 for the week ending May 3, 2008 and \$167.00 for the week ending May 10, 2008. Therefore, had benefits been calculated based on the earnings information provided by the Oakville Tap, Ms. Timmerman should only have received a total of \$421.00.

Based on his determination Ms. Timmerman may have received an overpayment of benefits, Ms. Carnahan sent her a preliminary audit notice asking Ms. Timmerman to appear for an interview. Ms. Timmerman appeared for the interview and admitted that she had worked at the Oakville Tap during the time in question and had been paid in cash. Ms. Timmerman denied, however, that she worked the number of hours reported by the employer. Mr. Carnahan provided Ms. Timmerman with copies of the documents on which his audit was based so she could discuss the same with the employer. Ms. Timmerman was to contact Mr. Carnahan with proof she did not earn the amount of money reported by the Oakville Tap.

Mr. Carnahan did not hear back from Ms. Timmerman. Therefore, on March 30, 2009 he sent her a second preliminary audit notice with an appearance date of April 10, 2009. Mr. Carnahan later noted Ms. Timmerman did not appear for the second interview and, on April 22, 2009, the department issued its decision Ms. Timmerman was overpaid benefits in the amount of \$1,865.78.

At hearing, Ms. Timmerman argued that she did not work the number of hours or earn the amount of money reported by the Oakville Tap. Ms. Timmerman stated that she worked at the Oakville Tap only when the manager called her and asked her to help out, which was usually during the lunch hour. She stated she worked only for tips.

Ms. Timmerman testified the owner of the business holds a grudge against her based on a romantic relationship between his son and a relative of Ms. Timmerman. Ms. Timmerman did not explain exactly what about that relationship would have caused the owner of the bar to lie about her earnings nor did she produce any evidence to support her testimony. Ms. Timmerman admitted that she did not keep track of any of the hours she worked or any of her earnings.

Additional facts will be cited as appropriate.

## CONCLUSIONS OF LAW

The issue is whether Mary A. Timmerman has been overpaid benefits in the amount of \$1865.78 and, if so, whether the overpayment was the result of misrepresentation on Ms. Timmerman's part.

Iowa law provides that the division of job service must recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.<sup>1</sup> If any benefits were received due to misrepresentation, the department is entitled to file a lien in the amount of the overpayment in favor of the state against any property owned by the benefits recipient.<sup>2</sup>

In the present case, while Ms. Timmerman argues she did not work the number of hours or earn the amount of money reported. However she offered no evidence to support her statements. Ms. Timmerman provided no explanation of why the employer would have lied about her earnings. She failed to provide any connection whatsoever between a romantic relationship between her relative and the employer's son and the employer's report of her earnings during the first and second quarters of 2008. Further, while Ms. Timmerman claimed the employer's son agreed with her about the employer's propensity to lie about her, she failed to offer any statement from that individual as corroboration. Ms. Timmerman might have presented testimony from the manager of the bar, any other person who might have worked there or any patron who might have been familiar with the amount of time she worked or how much she earned. Mr. Carnahan gave Ms. Timmerman three months to produce evidence she earned less money than the Oakville Tap reported after her first interview on December 30, 2008. She produced no such evidence nor did she contact Mr. Carnahan during those three months to indicate she was having difficulty finding proof. Ms. Timmerman had an additional month to obtain evidence of what she earned after receiving the department's decision, however she failed to produce any such evidence at hearing. Under these circumstances, the department's decision Mary Timmerman was overpaid benefits in the amount of \$1,865.78 must be affirmed.

The next issue to be determined is whether the overpayment was due to misrepresentation on Ms. Timmerman's part. The evidence shows Ms. Timmerman consistently failed to report any earnings whatsoever week after week for the period in question even though she was working and earning money. Ms. Timmerman testified she did not think of her efforts at the Oakville Tap as employment because she only worked for when asked and earned only tips. However, each week when she called in to report in order to obtain her unemployment benefits, a recording asked Ms. Timmerman whether she had worked at all that week. She had to have reported she did not work each week in order for the system to reflect no reported earnings. It does not appear this is a case of simple error on Ms. Timmerman's part. Rather, the evidence reflects a pattern of failing to report that she worked in order to receive more benefits than those to which she was actually entitled. Under these circumstances, the

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<sup>1</sup> Iowa Code section 96.3(7).

<sup>2</sup> Iowa Code section 96.16(4).

representative's decision must be affirmed.

**DECISION**

The decision of the representative dated April 22, 2009, reference 01, is AFFIRMED. The claimant has been overpaid benefits in the amount of \$1,865.78 due to misrepresentation.

kka