

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

Appeal Number: 10IWDUI103-106

OC: 8/16/09

Claimant: Appellant (4)

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, 4TH 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.

**CHAD COURTNEY
55 BIRCH COURT
NORTH LIBERTY, IA 52317**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
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.

DAN ANDERSON, IWD

(Administrative Law Judge)

September 2, 2010

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Chad Courtney filed a timely appeal from four decisions issued by Iowa Workforce Development (the Department). The first decision, dated January 28, 2010, reference 01, found Mr. Courtney ineligible to receive unemployment insurance benefits because he was in jail and therefore not available for work. The decision disqualified him from receiving benefits effective December 29, 2009. The second decision, dated January 29, 2010, reference 02, also found Mr. Courtney ineligible to receive unemployment insurance benefits because he was in jail and therefore unavailable for work. This decision disqualified him from receiving benefits effective December 2, 2009. In the third decision, dated February 15, 2010, reference 03, the Department determined that Mr. Courtney was overpaid \$1,432 in unemployment benefits for the four weeks between November 29, 2009 and December 26, 2009. This decision was the result of the January 29, 2010 decision disqualifying Mr. Courtney for not being able and available to work. In the fourth decision, dated February 15, 2010, reference 04, the

Department determined that Mr. Courtney was overpaid \$1,432 in unemployment benefits for the four weeks between December 27, 2009 and January 23, 2010. This decision was the result of the January 28, 2010 decision disqualifying Mr. Courtney for not being able and available to work.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on April 12, 2010 to schedule a contested case hearing. The parties originally convened for hearing on May 14, 2010. At that time, Mr. Courtney requested a continuance. He was incarcerated at the time and requested that the hearing be rescheduled for a date after his release so that he would have a better opportunity to prepare his case. The continuance request was granted.

On July 30, 2010, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Karen Von Behren represented the Department and presented testimony. Appellant Chad Courtney appeared and presented testimony. Exhibits 1 through 16 were submitted by the Department and admitted into the record as evidence.

ISSUES

1. Whether the Department correctly determined that the appellant was ineligible to receive unemployment benefits because he was not available to work.
2. Whether the Department correctly determined that the appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.
3. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

FINDINGS OF FACT

Chad Courtney was arrested and taken to the Muscatine County jail on December 2, 2009. (Exh. 4). He was incarcerated at the Muscatine County jail from December 2, 2009 through December 29, 2009. (Exh. 3). After leaving there, he was transferred to the Iowa Medical and Classification Center in Coralville, Iowa. He was later transferred to the penitentiary at Fort Madison, Iowa. He was released from prison a few weeks prior to this hearing. (Courtney, Von Behren testimony).

During the time that Mr. Courtney was incarcerated, unemployment claims were made on his account. Specifically, claims were made for the weeks ending December 5, 2009, December 12, 2009, December 19, 2009, December 26, 2009, January 2, 2010, January 9, 2010, January 16, 2010, and January 23, 2010. (Exh. 13, 16). Benefits were issued each week in the amount of \$358, \$333 of which was Mr. Courtney's weekly benefit amount and \$25 of which was a federal stimulus payment. The total amount of benefits issued during the eight-week time period was \$2,864 (\$1,432 for each four-week period). (Exh. 13, 16).

As noted, Mr. Courtney was incarcerated at the time all of the claims at issue were made. He did not personally call in any of the claims made. When a claimant makes a telephone or on-line claims application, he is required to enter a four-digit personal identification number (PIN). The claimant sets his own PIN number the first time that a call or on-line claims application is made. The Facts about Unemployment Insurance booklet that is sent to all claimants at the time an application for unemployment benefits is made instructs the claimant not to share the PIN with anyone. (Exh. 6).

When these benefits were issued to Mr. Courtney, they were placed on the pre-paid debit card that the state provides to unemployment insurance recipients for this purpose. (Von Behren testimony). A PIN is required to use the pre-paid debit card as well. This PIN may be, but does not have to be, the same as the PIN used for claims reporting. (Exh. 6).

On January 13, 2010, the Department sent Mr. Courtney a letter indicating that his unemployment insurance claim was being audited and informing Mr. Courtney that unemployment claims had been filed and paid during the time he had been incarcerated. (Exh. 10). In response to this letter, Mr. Courtney wrote a letter to the Department in which he stated that he had given permission to his wife to use whatever amount was remaining on his pre-paid debit card for living expenses for the couple's daughter and Christmas gifts. Mr. Courtney's wife came to the Muscatine County jail and he was able to give her the pre-paid debit card. Shortly after that, Mr. Courtney's wife informed him that she intended to file for divorce. The couple is currently separated. (Exh. 4).

Mr. Courtney believes that his wife was the person who made the unemployment claims on his account while he was incarcerated. He used the same PIN for claims reporting and the pre-paid debit card as he did for other purposes. His wife would have known this number, though he never told her specifically that this number was the PIN he used for claims reporting and the debit card. Mr. Courtney's wife was not working at the time he was incarcerated and he believes she was desperate. Mr. Courtney never asked or instructed his wife to make claims on his behalf while he was incarcerated. As soon as the issue came to his attention, he took action to ensure that no further benefits were issued, asking the Department to cancel his debit card. (Courtney testimony; Exh. 4).

Mr. Courtney has not made any report to law enforcement regarding his wife's unauthorized use of his pre-paid debit card or her unauthorized unemployment claims reporting. He reported at hearing that he is waiting to see how this appeal plays out before he makes a decision about what to do. Mr. Courtney is somewhat reluctant to report this issue to law enforcement as he is concerned about his daughter's welfare if her mother were to be arrested. (Courtney testimony).

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.¹ If a claimant is overpaid benefits as a result of misrepresentation, the Department may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant’s real or personal property and rights to property.²

Here, the alleged overpayments stem from the Department’s determination that Mr. Courtney was not eligible for benefits from December 2, 2009 onward because he was not available for work owing to being incarcerated. In order to receive unemployment insurance benefits, an individual must be able to work, available for work, and be earnestly and actively seeking work.³

A. Available for Work

There is no dispute that Mr. Courtney was not available to work during the weeks that unemployment claims were made. Mr. Courtney was incarcerated during that time. The Department’s regulations provide that an individual who is in jail or prison is not available for work.⁴

B. Overpayment

Having determined that Mr. Courtney was ineligible for unemployment insurance benefits while he was incarcerated, it is fairly simple to conclude that Mr. Courtney was overpaid unemployment insurance benefits during the weeks in question. Mr. Courtney did not dispute the fact that benefits were paid during the weeks in question, nor did he dispute the amount of benefits the Department alleged were paid each week.

Mr. Courtney’s argument is that he should not be held responsible for claims that he did not make. This argument is ultimately not persuasive. Mr. Courtney acknowledged that the PIN he used for the claims reporting system was the same as the PIN for the bank account that he and his wife share. He could not remember at the time of hearing whether a PIN was necessary to use the debit card, but acknowledged that if a PIN was necessary he would have used the same one that he used for everything else, including the joint bank account with his wife. Mr. Courtney also took affirmative steps to give his wife his pre-paid debit card after he was incarcerated. While he did not direct her to make claims, neither did he take steps (like changing his claims reporting PIN) that would have prevented her from doing so. Additionally, Mr. Courtney became aware of this situation when the Department brought it to his attention in January, 2010. Mr. Courtney was released from prison a few weeks before the hearing. Even as late as the date of this hearing, Mr. Courtney had taken no steps to report to law enforcement his belief that his wife had made unauthorized unemployment claims and used his pre-paid debit card without authorization.

1 Iowa Code § 96.3(7)(a) (2009).

2 Iowa Code § 96.16(4) (2009).

3 Iowa Code § 96.4(3) (2009).

4 871 Iowa Administrative Code (IAC) 24.23(12).

Mr. Courtney is justifiably concerned about his daughter's welfare and, for this reason, is reluctant to contact law enforcement regarding this issue for fear that his wife may face adverse consequences. Mr. Courtney does not want, however, to be held responsible for claims he did not make, despite his unwillingness to pursue typical channels – like law enforcement – to resolve this issue. Unfortunately, Mr. Courtney cannot have it both ways. He cannot simultaneously protect his wife from the consequences of the actions he believes she took and protect himself from liability for the overpayment. In light of the absence of any good faith effort to report the unauthorized use of his benefits to law enforcement, Mr. Courtney is responsible for the overpayment.

C. Misrepresentation

A finding of misrepresentation is supported when an individual receives benefits while not eligible “by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact.”⁵

The evidence in the record does not support a finding of misrepresentation in this instance. Mr. Courtney credibly testified that he had no knowledge of the claims that were made while he was incarcerated and that he did not instruct anyone to make those claims on his behalf. While the statute does indicate that nondisclosure or misrepresentation by someone other than the claimant can give rise to a misrepresentation finding, there must be some affirmative action on the part of the claimant that plays a part in the nondisclosure or misrepresentation. In this case, for example, if Mr. Courtney had instructed his wife to make the claims while he was incarcerated, her actions – by his direction – could support the finding of misrepresentation. If, however, the claimant truly has no knowledge of and has not directed the false statements, a finding of misrepresentation cannot stand.

DECISION

The Department's decisions dated January 28 and January 29, 2010 (reference 01 and 02) are AFFIRMED. The Department's decisions dated February 15, 2010 (reference 03 and 04) are MODIFIED. The claimant was overpaid a total of \$2,864 in unemployment insurance benefits. The overpayment was not a result of misrepresentation. The Department shall amend its records to reflect that the overpayments at issue here did not occur as a result of misrepresentation. The Department shall take any further action necessary to implement this decision.

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⁵ Iowa Code § 96.16(4) (2009).