

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

**Appeal Numbers:** 13IWDUI270-271  
**OC:** 06/10/2012  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**JAMES SULLIVAN**  
**18175 280<sup>TH</sup> STREET**  
**MASON CITY, IA 50401-9098**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**JANE CONNOR, INVESTIGATOR**

JONI BENSON, 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, 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.

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.

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(Administrative Law Judge)

November 8, 2013

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(Dated and Mailed)

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Iowa Code section 96.4-3 – Eligibility for Benefits  
Iowa Code section 96.6-2 – Recovery of Overpayment Benefits  
Iowa Code section 96.16-4 – Misrepresentation

**STATEMENT OF THE CASE**

Claimant/Appellant James Sullivan appealed two decisions issued by Respondent Iowa Workforce Development (“IWD”). In reference 02, dated May 20, 2013, IWD found Sullivan was ineligible to receive unemployment insurance benefits from January 6, 2013 through March 16, 2013 because IWD’s records indicated that for the given dates he did not make an adequate work search. In reference 3, dated May 24, 2013, IWD

found Sullivan received a \$4150.00 overpayment, due to misrepresentation, for the weeks between January 6, 2013 and June 16, 2013 because of the decision dated May 20, 2013, which disqualified him for an inadequate work search.

On May 30, 2013, 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 Sullivan. Additional documentation was submitted by IWD on July 1, 2013, with a copy mailed to Sullivan. A contested case hearing was held on July 12, 2013. Sullivan did not appear. Jane Connor appeared and testified on behalf of IWD. Exhibits 1 through 14 were admitted into the record. A decision was issued on July 16, 2013. Subsequently, the matter was remanded for new hearing by order of the Employment Appeal Board on September 10, 2013. A second contested case hearing was held on November 8, 2013. Sullivan did not appear. Jane Connor appeared on behalf of IWD and evidence was resubmitted. No new evidence was received from Sullivan. Because the same evidence was submitted at the November 8, 2013 hearing and the July 12, 2013 hearing, the findings of fact and conclusions of law in this matter remain unchanged.

### **ISSUES**

Whether IWD correctly determined the Claimant is ineligible to receive unemployment insurance benefits.

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**

Sullivan has received unemployment insurance benefits in the past. IWD received a report that Sullivan was not making work searches and proceeded to investigate the claim. Jane Connor sent Sullivan a notice to report for a reemployment services meeting. The notice to report instructed Sullivan to bring in a list of work contacts including dates, business name, complete street address of business, name of contact and business phone numbers. Sullivan appeared for the meeting and provided a contact list (Exhibit 4).

Connor then sent out verification of work search contact inquiries to every contact listed by Sullivan in Exhibit 4. All of the returned inquiries indicated they had no record of any contact from Sullivan. Inquiries to the remaining four contacts were returned to IWD by the postal service indicating the address (as provided by Sullivan) was invalid. Connor asked Sullivan to come in for another meeting to discuss the potential overpayment of unemployment benefits due to not making valid work contacts. (Exhibit 5). Sullivan attended the appointment and signed a written statement. (Exhibit 6). Sullivan reported he made some of his contacts online and he mailed resumes out to others. He had no explanation as to why the contacts had no record of

him. Sullivan acknowledged his requirement to make at least two contacts each week in order to receive benefits. (Exhibit 6).

IWD issued a decision on May 20, 2013, reference 02, finding Sullivan was ineligible to receive unemployment insurance benefits from January 6, 2013 through March 16, 2013 because IWD's records indicated that for the given dates he did not make an adequate work search. IWD issued a second decision, on May 24, 2013, reference 03, finding Sullivan received a \$4150.00 overpayment, due to misrepresentation, for the weeks between January 6, 2013 and June 16, 2013 because of the decision dated May 20, 2013, which disqualified him for an inadequate work search. Sullivan appealed both decisions.

## **REASONING AND CONCLUSIONS OF LAW**

### **I. Eligibility for Benefits**

To be eligible to receive unemployment benefits, an unemployed individual must be able and available for work, and earnestly and actively seeking work.<sup>1</sup> The unemployed individual bears the burden of proving the individual is able and available for work, and earnestly and actively seeking work.<sup>2</sup>

Merely registering with IWD does not establish an individual is earnestly and actively seeking work.<sup>3</sup> It is essential the person diligently look for work.<sup>4</sup> An individual is ineligible for benefits for any period for which IWD finds the individual has failed to make an earnest and active search for work.<sup>5</sup>

Sullivan submitted an appeal letter indicating that his contact list was accurate and that all of his required contacts were made. He contends it is unrealistic to expect employers to keep resumes on file and suggests that is why the employers had no record of him when contacted by IWD. Sullivan did not appear at hearing to testify under oath, or submit any other evidence.

In this case all of the contact inquires sent out by IWD were either returned as undeliverable, or were returned with an indication that the employer had no record of Sullivan. Mr. Sullivan's explanation, as provided in his appeal letter, is simply not convincing in light of the number of contacts. IWD's decision should be affirmed.

### **II. Overpayment and Misrepresentation.**

IWD contends Sullivan received an overpayment due to misrepresentation. 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

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<sup>1</sup> Iowa Code § 96.4(3).

<sup>2</sup> 441 IAC 24.22.

<sup>3</sup> *Id.* 24.22(3).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

acts in good faith and is not otherwise at fault.<sup>6</sup> 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>

In reference 3, dated May 24, 2013, IWD found Sullivan received a \$4150.00 overpayment, due to misrepresentation, for the four weeks between January 6, 2013 and June 16, 2013 because of a decision dated May 20, 2013 which disqualified him for an inadequate work search. IWD's decision should be affirmed.

### **DECISION**

IWD correctly found Sullivan was ineligible to receive unemployment insurance benefits and that he received an overpayment due to misrepresentation. IWD's decisions, references 02 and 03, are AFFIRMED.

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<sup>6</sup> Iowa Code § 96.3(7).

<sup>7</sup> *Id.* § 96.16(4).