

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

Appeal Number: 12IWDUI016
OC: 01/09/11
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

SAMUEL G. ROBBINS
3937 LINCOLN PL. DR.
DES MOINES, IA 50312-2969

INVESTIGATIONS AND RECOVERY, IWD
IRMA LEWIS, INVESTIGATOR

JOSEPH WALSH, 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.

(Administrative Law Judge)

February 29, 2012
(Dated and Mailed)

Iowa Code section 96.6-2 – Recovery of Overpayment Benefits

Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Claimant/Appellant Samuel Robbins filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated December 9, 2011, reference 07 finding he had been overpaid \$752 for two weeks between October 16, 2011 and October 29, 2011 because he failed to report wages earned with Hanifen Land Inc. IWD determined the overpayment was due to misrepresentation.

On January 12, 2012, IWD transmitted the case to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Robbins.

A contested case hearing was held on February 29, 2012. Robbins did not appear for the hearing as directed by the Notice of Telephone Hearing. The Notice of Telephone Hearing sent to Robbins has not been returned to my office as undeliverable mail. I waited five minutes to accommodate a late call from Robbins before proceeding with the hearing. He did not appear. Irma Lewis appeared and testified on behalf of IWD. Exhibits 1 through 7 were admitted into the record.

ISSUES

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

Robbins has received unemployment insurance benefits in the past. IWD conducted an audit of Robbins's file. Lewis testified that for the weeks ending October 22, 2011 and October 29, 2011, Hanifen Land Inc. reported Robbins earned wages of \$620 per week. Lewis reported that for the weeks ending October 22, 2011 and October 29, 2011 Robbins reported receiving no wages. Robbins received \$376 in unemployment insurance benefits per week for the weeks ending October 22, 2011 and October 29, 2011. Lewis believed Robbins had been overpaid.

Lewis testified she mailed Robbins a preliminary audit notice on November 16, 2011 to respond to the alleged overpayment by November 29, 2011. Lewis did not receive a response from Robbins. Because Robbins did not respond to Lewis, she determined he received a \$752 overpayment due to misrepresentation.

REASONING AND CONCLUSIONS OF LAW

I. Overpayment

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 acts in good faith and is not otherwise at fault.¹ 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.²

¹ Iowa Code § 96.3(7) (2009).

² *Id.*

An individual is totally unemployed in any week the individual has no payable wages.³ 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 \$15.⁴ An individual who is totally unemployed in any week must be paid benefits equal to the individual's weekly benefit amount.⁵ An individual who is partially unemployed shall be paid an amount equal to the individual's weekly benefit amount, less the portion of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount.⁶ The benefit amount is rounded to the lower multiple of one dollar.⁷

Robbins's weekly benefit amount was \$376. To be partially unemployed Robbins' earnings had to be less than his weekly benefit amount of \$376, plus \$15, or \$391. For the weeks ending October 22, 2011 and October 29, 2011, Robbins received \$620 per week in wages. Because his earnings exceeded \$391, IWD correctly determined Robbins was not entitled to any unemployment for the weeks ending October 22, 2011 and October 29, 2011. IWD's determination that Robbins received a \$752 overpayment is affirmed.

II. Misrepresentation

IWD determined the overpayment 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.⁸ During the weeks in question Robbins failed to report his income and received benefits he was not entitled to receive. The information Robbins reported was false. He did not appear at hearing to explain his position. IWD's decision should be affirmed.

DECISION

IWD's correctly found Robbins received a \$752 overpayment due to misrepresentation, and its decision, reference 07, is affirmed.

hlp

³ *Id.* § 96.19(38)a.

⁴ *Id.* § 96.19(38)b(1).

⁵ *Id.* § 96.3(2).

⁶ *Id.* § 96.3(3).

⁷ *Id.*

⁸ *Id.* § 96.16(4).