

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

Appeal Number: 15IWDUI035

OC: 2/23/14

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 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.

**ADAM T. DOSCHER
1016 BLOOMINGTON ST
IOWA CITY, IA 52245**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY
150 DES MOINES ST
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.

KIRSTEN WOOD, IWD

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.

JONI BENSON, IWD

(Administrative Law Judge)

February 17, 2015

(Decision Dated & Mailed)

Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits
Iowa Code § 96.16(4) - Misrepresentation

STATEMENT OF THE CASE

The Claimant, Adam T. Doscher, filed a timely appeal from a decision issued by Iowa Workforce Development (IWD) dated January 8, 2015, reference 02. In this decision, IWD stated as follows:

You are overpaid \$1110.00 between 12/08/13 and 4/12/14. This is because you incorrectly reported wages earned with Nature Care Company and The Blue Moose Inc.
... A 15% penalty will be added due to misrepresentation.

Upon receiving Mr. Doscher's appeal, IWD transmitted this case to the Department of

Inspections and Appeals on or about January 27, 2015 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on January 28, 2015. On February 13 2015, a telephone appeal hearing was held before Administrative Law Judge Carol J. Greta. Mr. Doscher appeared personally and testified on his own behalf. His father, William Doscher, also appeared and testified on behalf of his son. Investigator Kirsten Wood represented IWD and presented testimony.

ISSUES

The two issues presented here are (1) whether IWD correctly determined that the Claimant was overpaid unemployment benefits and, if so, the amount and (2) whether IWD correctly determined the overpayment was a result of misrepresentation.

FINDINGS OF FACT

When contacted to report for an interview with Ms. Wood about evidence that he had been paid \$1110 during November 10, 2013 to April 12, 2014, Mr. Doscher failed to respond. Accordingly, IWD issued a decision to him on January 8, 2015.

For the following five weeks during that time period, Nature Care Company paid wages as follows to Mr. Doscher, who reported wages as follows:

Week Ending	Wages Reported by Claimant	Wages Reported by Employer	UI Benefits Actually Paid	UI Benefits Entitled	Overpayment
11/16/13	\$300	\$333	0	0	0
11/23/13	\$200	\$236	0	0	0
12/14/13	\$80	\$155	\$100	\$25	\$75
12/21/13	\$40	\$69	\$140	\$111	\$29
TOTAL OVERPAYMENT DUE TO WAGES UNDERREPORTED FROM NATURE CARE COMPANY					\$104

For the following ten weeks during that time period, The Blue Moose Tap paid wages as follows to Mr. Doscher, who reported wages as follows:

Week Ending	Wages Reported by Claimant	Wages Reported by Employer	UI Benefits Actually Paid	UI Benefits Entitled	Overpayment
01/18/14	\$0	\$82	\$144	\$98	\$46
01/25/14	\$40	\$135	\$140	\$45	\$95
02/01/14	\$60	\$179	\$120	0	\$120
02/08/14	\$80	\$276	\$100	0	\$100
02/15/14	\$30	\$143	\$144	\$37	\$107
02/22/14	0	\$198	\$144	0	\$144
3/01/14	\$50	\$149	\$237	\$147	\$90

Week Ending	Wages Reported by Claimant	Wages Reported by Employer	UI Benefits Actually Paid	UI Benefits Entitled	Overpayment
3/08/14	0	\$83	\$237	\$213	\$24
3/15/14	0	\$145	\$237	\$151	\$86
3/22/14	\$30	\$40	\$237	\$237	0
4/05/14	0	\$119	\$237	\$177	\$60
TOTAL OVERPAYMENT DUE TO WAGES UNDERREPORTED FROM THE BLUE MOOSE TAP					\$872

And for one week, both Nature Care and The Blue Moose paid wages as follows to Mr. Doscher, who reported wages as follows:

Week Ending	Wages Reported by Claimant	Wages Reported by Employer	UI Benefits Actually Paid	UI Benefits Entitled	Overpayment
4/12/14	\$50	\$193	\$237	\$103	\$134

The overpayments total \$1110. At hearing, Mr. Doscher admitted that he was overpaid and that the amount calculated by IWD was correct. He disputed that the overpayment was the result of misrepresentation.

Both Mr. Doscher and his father characterized Mr. Doscher as more of an artist than a numbers person. In fact, Mr. Doscher flatly stated, "I am grossly incompetent with respect to bookkeeping."

Mr. Doscher filed his weekly IWD claims personally by telephone. It appears that he "guesstimated" his weekly wages because he admitted that, regarding his paychecks from Nature Care, he did not review them before entering the information on IWD's phone system. He was also confused about the impact of working less than 20 hours per week on his obligation to claim wages.

Ms. Wood pointed out in her testimony that the calling system provides warning to claimants that providing false information is a violation of the unemployment law. For instance, #11 on the phone script states as follows:

It is important that you answer all question truthfully. WARNING! Attempting to claim and receive unemployment insurance benefits by entering false information can result in loss of benefits, fines and imprisonment. To show you understand the warning message, please press one now. To show that you do not understand the warning message, press two.

(Exhibit B9)

The penultimate question on the phone script repeats the above warning and gives a

claimant the opportunity to cancel his claim. (Exhibit B10, #28)

REASONING AND CONCLUSIONS OF LAW

IWD is mandated to recover unemployment insurance benefits that have been overpaid, regardless whether the claimant who received the benefits was acting “in good faith and is not otherwise at fault.” Iowa Code § 96.3(7). As stated under “Findings of Fact,” Mr. Doscher did not dispute the overpayment or amount of the overpayment.

As of July 1, 2013, IWD “shall assess a penalty equal to fifteen percent” (15%) of an overpayment if the overpayment is the result of “a fraudulent overpayment.” Iowa Code § 96.16(4)(b). In its administrative rules, IWD defines fraud as the “intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself...; [or] a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations... .” 871—Iowa Administrative Code (IAC) 25.1. Misrepresentation is defined as representing information “at odds with the truth.” *Id.*

Notably absent from the above definitions is the intent to deceive or “scienter,” having specific knowledge of the pertinent facts and knowingly giving false information about those facts to IWD. In other words, it does not matter that Mr. Doscher was hapless and incompetent, rather than calculating and venal. By his own admission, he had the means to know what his wages were in fact, but rather than avail himself of that knowledge, he chose to guess as to his wages, resulting in a very large overpayment of benefits to him over a period of roughly a half year.

This administrative tribunal concludes that Mr. Doscher was overpaid in the amount of \$1110. Further, the overpayment was the result of fraudulent misrepresentation of the pertinent facts. When receiving unemployment benefits, a claimant must do more than guess at wages reported to IWD, and Mr. Doscher was put on notice of his obligation each week he submitted the information by phone. If he was confused, it was incumbent on him to seek out answers from IWD.

DECISION

Iowa Workforce Development’s decision dated January 8, 2015, reference 02, is **AFFIRMED**. IWD shall take steps to recover the overpayment of \$1110, including assessment of the 15% penalty.¹

cjg

¹ Mr. Doscher inquired as to the income tax consequences of this decision. Addressing that question is not within the jurisdiction of this tribunal.