

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

Appeal Number: 13IWDUI286
OC: 09/02/12
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.

GABRIEL HATHAWAY
4130 Lincoln Swing #1
Ames, IA 50014

STATE CLEARLY

INVESTIGATIONS AND RECOVERY, IWD
KYLE PAXTON, INVESTIGATOR

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.

CARLA DENNIS, 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.

(Administrative Law Judge)

July 29, 2013

(Decision Dated & Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Claimant/Appellant Gabriel Hathaway filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated May 21, 2013, reference 06. In the decision IWD determined Hathaway received a \$215 overpayment between February 3, 2013 and February 9, 2013, due to misrepresentation.

IWD transmitted the case to the Department of Inspections and Appeals on June 7, 2013, to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Hathaway.

On July 26, 2013, a contested case hearing was held before Administrative Law Judge David Lindgren. Hathaway did not appear for the hearing as directed by the Notice of Telephone Hearing. Kyle Paxton appeared and testified on behalf of IWD. Exhibits A through K 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 the overpayment was the result of misrepresentation.

FINDINGS OF FACT

Hathaway was receiving unemployment benefits prior to February of 2013. IWD learned Hathaway was working for Gatr of Des Moines, Inc., when it reported to IWD that he had begun to work for the company on February 7, 2013. It also reported that Hathaway had earned gross wages of \$314.30 for the week ending February 9, 2013.

IWD compared the information reported by Gatr with the information reported by Hathaway and determined Hathaway received a total overpayment of \$215. It determined this amount by comparing the amount of compensation he received for the week of February 9 (\$396) and the amount he would have been eligible for had he reported the income (\$181).

Investigator Paxton subsequently mailed Hathaway a Preliminary Audit Notice, asking her to provide a response to the alleged overpayment by May 5, 2013. Hathaway never provided a response.

REASONING AND CONCLUSIONS OF LAW

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 acted in good faith and was 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

The record supports IWD's determination that Hathaway received a net total overpayment of \$215.

II. Misrepresentation

¹ Iowa Code § 96.3(7) (2011).

² *Id.*

IWD determined the overpayments 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.³

I conclude IWD adequately established misrepresentation here. The many documents which IWD provided to Hathaway during this process required him to report all earnings when earned and that any failure to so report can result in a loss of benefits.

DECISION

IWD's decision dated May 21, 2013, reference 06, is AFFIRMED. IWD correctly determined Hathaway received a \$215 overpayment due to misrepresentation.

dbl

³ *Id.* § 96.16(4).