

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

**Appeal Number: 11IWDUI096**

**OC: 11/21/10**

**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, 4<sup>TH</sup> 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.

**MATTHEW DUNCAN  
581 JUNIPER RD.  
PILOT MOUND, IA 50223-7547**

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.

JOSEPH WALSH, IWD

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(Administrative Law Judge)

June 30, 2011

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(Decision Dated & Mailed)

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## STATEMENT OF THE CASE

Matthew Duncan filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated February 11, 2011 (reference 01). In this decision, the Department determined that Mr. Duncan was overpaid \$1,936 in unemployment insurance benefits for four weeks between September 26, 2010 and October 30, 2010. The decision states that the overpayment resulted from the appellant's failure to report wages earned with Heck's Dozer Inc.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on May 3, 2011 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on May 10, 2011. On June 10, 2011, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Jane Connor represented the Department and presented testimony. Exhibits 1 through 8 were submitted by the Department and admitted into the record as

evidence. Appellant Matthew Duncan failed to appear and the hearing was held in his absence.

### ISSUES

1. Whether the Department correctly determined that the appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.
2. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

### FINDINGS OF FACT

Matthew Duncan filed a claim for unemployment benefits with an effective date of November 21, 2010. Mr. Duncan made claims for and received unemployment benefits during September and October, 2010.

Heck's Dozer Inc. reported to the Department that Mr. Duncan began working for that company on September 28, 2010. Heck's reported to the Department that Mr. Duncan was working full-time and earned wages from the week ending October 2, 2010 through the week ending October 30, 2010. When making claims for those weeks, Mr. Duncan failed to report any wages in all of the weeks except one. Mr. Duncan's weekly benefit amount during this time period was \$461.

The following chart sets out the amounts claimed by Mr. Duncan and reported by Heck's Dozer Inc., as well as the amount of benefits Mr. Duncan received each week and the amount of benefits the Department believes Mr. Duncan should have received if his wages were correctly reported.

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employer</i>	<i>Benefits rec'd</i>	<i>Benefits entitled</i>
10/2/10	\$0	\$600	\$484	\$0
10/9/10	\$0	\$825	\$484	\$0
10/16/10	\$692	\$780	\$0	\$0
10/23/10	\$0	\$825	\$484	\$0
10/30/10	\$0	\$585	\$484	\$0

Based on the foregoing, the Department determined that Mr. Duncan was overpaid unemployment benefits in the amount of \$1,936. Mr. Duncan's weekly benefit amount during the relevant time period was only \$461, but the Department's representative testified at hearing that the \$484 weekly benefit amount for the weeks listed above includes the \$25 federal stimulus payment Mr. Duncan received during those weeks. I note that Mr. Duncan's benefit amount plus \$25 equals \$486, not \$484. The Department, however, has calculated the overpayment at \$484 in each of those weeks and issued its overpayment decision accordingly.

After determining the discrepancy between the amounts reported by Mr. Duncan and his employer, the Department sent Mr. Duncan a preliminary audit notice on January 25, 2011. That notice advised him of the discrepancy and gave him an opportunity to respond. Mr. Duncan did not respond to the Department's preliminary audit notice.

When a claimant calls in or reports his weekly unemployment insurance claim online, he is always asked whether he worked during the week claimed. During the weeks ending October 2, October 9, October 23, and October 30, 2010, Mr. Duncan responded "no" to this question. Based on the fact that he reported that he was not working during weeks that his employer reported that he worked and earned wages, the Department concluded that the overpayment in this case was due to misrepresentation.

On February 11, 2011, the Department issued a decision that determined Mr. Duncan was overpaid by \$1,936 in unemployment insurance benefits as a result of misrepresentation. Mr. Duncan appealed this decision.

### **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.<sup>1</sup> 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.<sup>2</sup>

There was credible evidence presented by the Department from Mr. Duncan's employer that Mr. Duncan earned wages during weeks in which he did not report working. Mr. Duncan did not contact the Department in response to the preliminary audit notice to explain the discrepancy, nor did he appear at the hearing to present any testimony that would shed light on the discrepancy or his reasons for failing to report wages. I accept as credible the evidence the Department presented regarding Mr. Duncan's wages during the weeks in question.

An individual who is partially unemployed may receive unemployment insurance benefits if he is working less than his normal full-time week for an employer and is earning less than his weekly benefit amount plus fifteen dollars.<sup>3</sup> Mr. Duncan, then, could have earned up to \$476 in a week and still received some amount of unemployment benefits. Mr. Duncan earned more than \$476 during each of the weeks he was overpaid, therefore he was not entitled to any partial unemployment benefits during those weeks. Under these circumstances, the Department correctly calculated

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<sup>1</sup> Iowa Code § 96.3(7)(a) (2011).

<sup>2</sup> 871 Iowa Administrative Code (IAC) 24.18.

<sup>3</sup> Iowa Code § 96.19(38)(b)(1) (2011).

Mr. Duncan's overpayment at \$1,936.

A finding of misrepresentation is supported when an individual receives benefits while not eligible based on the nondisclosure or misrepresentation of a material fact.<sup>4</sup> The evidence here demonstrates that Mr. Duncan asserted in his weekly claim reporting during the weeks in question that he was not working. In fact, Mr. Duncan worked and was paid wages for those weeks. Mr. Duncan did not appear at the hearing to offer any explanation for his failure to report wages during the weeks in question. Under these circumstances, the Department correctly determined that the overpayment was due to misrepresentation.

### **DECISION**

Iowa Workforce Development's decision dated February 11, 2011, reference 1, is **AFFIRMED**. The appellant has been overpaid benefits in the amount of \$1,936 due to misrepresentation.

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<sup>4</sup> Iowa Code § 96.16(4) (2009).