

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

**Appeal Number: 13IWDUI184**  
**OC: 6/24/12**  
**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, 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.

**KELLY GREEN**  
**3912 N. UNION**  
**DES MOINES, IA 50316-1064**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**IRMA LEWIS**  
**430 EAST GRAND AVE**  
**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.

JONI BENSON, IWD

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(Administrative Law Judge)

May 30, 2013

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(Decision Dated & Mailed)

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### STATEMENT OF THE CASE

Kelly Green filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated March 27, 2013, reference 04. In this decision, the Department determined that Green was overpaid \$1028 in unemployment insurance benefits for four weeks between 1/6/13 and 2/2/13. The decision states that the overpayment resulted from the claimant failing to report wages earned from National Pharmaceutical.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on April 12, 2013 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on April 18, 2013. Additional exhibits were mailed to Green and the Administrative Law Judge by Investigator Irma Lewis on April 24, 2013. On May 29, 2012, a telephone appeal hearing was held. Investigator Irma Lewis represented the Department and presented testimony. Exhibits

1 through 7 were submitted by the Department and admitted into the record as evidence. Green appeared and was self-represented.

### **ISSUE**

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**

Kelly Green filed a claim for unemployment benefits with an original claim date of June 24, 2012. Green made claims for and received unemployment benefits during the weeks between 1/6/13 and 2/2/13

At some point, the Department received information indicating that National Pharmaceutical had hired Green as an employee. The Department obtained audit from the employer. The employer reported that Green worked in each of the weeks ending 1/12/13, 1/19/13, 1/26/13, and 2/1/13. The Department was unable to produce any documentation of the employer audit or Green's wages. (Lewis testimony).

Green submitted a claim for unemployment insurance benefits for the weeks ending 1/12/13, 1/19/13, 1/26/13, and 2/1/13. During the first week, Green reported zero earnings. During the next three weeks, Green reported earning \$1.00. Green's weekly benefit amount during this time period was \$257. The Department did not provide any documentation of Green's claims or the benefit amounts. (Lewis testimony).

Based on the foregoing, the Department determined that Green was overpaid unemployment benefits in the amount of \$1028. (Lewis testimony).

On March 27, 2013, the Department issued a decision to Green notifying her that she was overpaid by \$1028 as a result of misrepresentation. (Exh. 3). Green appealed the decision. In her appeal letter, Green asserts that she didn't receive a paycheck from her job for the first month. She was confused as to how to report earnings she had not yet received. (Exh. 2). At hearing, Green acknowledged she started at National Pharmaceutical on 1/7/13. She reported she did not receive a paycheck for the first month and wasn't certain what her pay would be. She put in the \$1.00 amount because she didn't want to overestimate the earned wages. Green acknowledged that she was notified of the consequences of misrepresentation. (Green testimony).

### **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>

A. Overpayment

There is no dispute here that Green was overpaid unemployment insurance benefits for the four weeks between 1/6/13 and 2/2/13. Green herself admitted as much in her appeal of the Department’s March 27, 2013 decision. Additionally, the testimony presented by Lewis at hearing supports the Department’s overpayment finding. Consequently, the Department’s decision that Green was overpaid in the amount of \$1028 is affirmed.

B. Misrepresentation

A finding of misrepresentation is supported when an individual receives benefits while not eligible “by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact.”<sup>3</sup> In her appeal letter, Green acknowledged being employed and during the weeks at issue. She indicated she did not report the wages she was earning because she had not received a paycheck yet. The Department’s eligibility requirements clearly require claimants to report all earnings when earned, not when paid. (Exh. 7). Green has not denied that she was not entitled to benefits for the time period at issue. Under these circumstances, the Department’s decision that the overpayment was a result of misrepresentation is correct and must be affirmed.

**DECISION**

Iowa Workforce Development’s decision dated March 27, 2013, reference 04, is **AFFIRMED**. The claimant has been overpaid benefits in the amount of \$1028 due to misrepresentation.

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<sup>1</sup> Iowa Code § 96.3(7)(a) (2013).

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

<sup>3</sup> Iowa Code § 96.16(4) (2013).