

IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
DIVISION OF ADMINISTRATIVE HEARINGS  
Lucas State Office Building  
Des Moines, Iowa 50319

**Appeal Number: 06-IWDUI-128**  
**OC: 03/06/05**  
**Claimant: Appellant (1)**

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**JERRY A WATTS**  
**611 LINN STREET APT #4**  
**ATLANTIC IA 50022**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATION AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

DAN ANDERSON, 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, 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.

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.

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(Administrative Law Judge)

June 16, 2006

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(Decision Dated & Mailed)

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Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated May 18, 2006, reference 0r, which held that the claimant was overpaid unemployment benefits in the amount of \$465.00, because he incorrectly reported wages earned with Camblin Mechanical Inc. for a 3-week period ending November 19, 2005.

After due notice was issued, a hearing was held by telephone conference call on June 13, 2006.

The claimant participated. Iowa Workforce Development, investigation and Recovery, participated by John Doidge, Investigator.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having examined all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits with an effective date of March 6, 2005. The department conducted a cross match audit of the claimant's claim for the fourth quarter of 2005. A representative of Camblin Mechanical Inc. reported the gross wages and vacation earned by the claimant during a review period from September 25, 2005 to November 19, 2005. The department compared the employer's wage report against the claimant's unemployment claims for the same weeks.

The department determined the claimant had some overpayment for four, separate weeks. The claimant reported wages of \$50 for the week ending October 1, and the employer reported \$68. Based on the employer's report the claimant should have received \$244, not \$250, and is overpaid \$6.

The employer reported wages of \$297, vacation pay of \$454, for a total of \$750 the week ending November 5, while the claimant reported \$150. Based on the employer's report, the claimant was not entitled to the \$162 benefit he received, and is overpaid that amount. The employer reported wages of \$147, vacation pay of \$93 for a total of \$240 for the week ending November 12. Based on the employer's report, the claimant was entitled to \$72, not \$242, for an overpayment of \$170.

The employer reported wages of \$366 for the week ending November 19, while the claimant reported \$185. Based on the employer's report, the claimant was not entitled to the \$127 benefit.

Investigator Doidge mailed a notice with the audit documentation to the claimant on April 27, 2006, and when he did not respond, the department issued a decision that he is overpaid \$465.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$465.00.

#### **Iowa Code Section 96.3-7 provides:**

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The division of job service in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the division a sum equal to the overpayment.

If the division determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant is overpaid benefits \$465.00 for the 4-week period ending November 19, 2005 pursuant to Iowa Code Section 96.3-7. The claimant was not aware that the payment of vacation pay is considered deductible wages when determining unemployment benefits. Although the claimant questioned the overpayment, he did not have any evidence that his employer miss-reported his wages and vacation pay for the 4-weeks at issue. If the claimant should receive information that the employer erred, then he may request a re-hearing in this matter, and submit that information.

**DECISION:**

The decision of the representative dated May 18, 2006, reference 03, is **AFFIRMED**. The claimant is overpaid benefits \$465.00.

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