

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319-8082

Appeal Number: 13IWDUI521
OC: 05/05/13
Claimant: Appellant (01)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DAMON W. LORD
703 BOONE AVENUE
OTTUMWA, IA 52501

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

KAREN VONBEHREN, INVESTIGATOR
JONI BENSON, 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, 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.

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.

Charles B. Tarvin, Administrative Law Judge

December 16, 2013

(Dated and Mailed)

Iowa Code section 96.3-7 – Correctness of Amount Claimed as Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

On October 15, 2013, Claimant/Appellant Damon Lord filed the appeal from a decision issued by Iowa Workforce Development (IWD) on October 3, 2013, reference 01, concluding that from March 3, 2013 to March 23, 2013, he received an overpayment (\$981.00) of unemployment insurance benefits because he incorrectly reported wages earned. IWD added a 15% penalty due to misrepresentation.

On or about October 25, 2013, IWD transmitted the case to the Iowa Department of

Inspections and Appeals (DIA) to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Lord. On November 5, 2013, DIA administrative hearings issued a notice of telephone hearing to Lord for November 26, 2013 at 8:30 a.m.

On November 26, 2013 at 8:35 a.m., Administrative Law Judge Charles B. Tarvin convened the hearing. Lord failed to appear. Karen VonBehren, an IWD investigator, appeared and testified on behalf of IWD. The judge admitted the IWD decision letter, notice of appeal, decision overpayment worksheet, wages cross match, crossmatch audit worksheet, IWD email exchange with employer H and wage verification, claim information, excerpts from *Facts About Unemployment Insurance 2013-2014*, previous IWD decision letters, and preliminary audit notice into the record.

Pursuant to 841 Iowa Administrative Code (IAC) section 26.4(2), an appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile or in person, not later than ten calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address.

In the case at issue, Lord filed his appeal on October 15, 2013, more than 10 calendar days after issuance of IWD's decision letter to an obsolete address [3- S-, O-, Iowa] on October 3, 2013. Since IWD did not certify timeliness of the appeal as an issue to be considered, the judge will not dismiss the appeal as untimely.

The Iowa Administrative Procedure Act provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision. See Iowa Code section 17A.12(3) Iowa Workforce Development regulations give the presiding officer discretion regarding whether to proceed with a hearing in the absence of one or more of the parties. See 871 Iowa Administrative Code (IAC) section 26.14(6), (7). In the case at issue, the judge exercised his discretion by not entering a default decision against Lord.

ISSUES

1. Whether the department correctly established and requested repayment of an alleged overpayment of unemployment insurance benefits due to misrepresentation of wages.
2. Whether the department correctly determined that the overpayment was the result of misrepresentation.

FINDINGS OF FACT

On February 8, 2012, IWD issued a decision letter stating that Lord received an overpayment (\$646.48) of unemployment benefits from September 25, 2011 to November 19, 2011 because Lord incorrectly reported wages earned. On August 22, 2012, IWD issued a decision letter stating that Lord received an overpayment (\$415.00) of unemployment benefits from June 17, 2012 to June 23, 2012 because Lord incorrectly reported wages earned. As early as June 2012, Lord exhibited a pattern of incorrectly reporting wages earned.

Lord was provided a copy of the handbook *Facts About Unemployment Insurance 2013-2014*. The handbook included information regarding eligibility requirements, how a part-time job affects your benefits, what if you are overpaid, and fraud.

Lord filed a claim for unemployment benefits for the weeks ending March 9, 2013 through March 23, 2013. IWD audited Lord's unemployment claims. Lord was being paid by one employer, Harsco Corporation.

The following chart sets out the amounts reported by Lord and the amounts that his employer reported (combined) during the weeks indicated, as well as the amount of benefits Lord received each week and the amount of benefits that IWD believes Lord should have received if his wages were as reported by the employer.

Wk ending	Reported by Claimant	Reported by Employer	UI Benefits Rec'd	Benefits entitled	Overpymt/ U/P
3/9/13	0.00	386.00	415.00	132.00	283.00
3/16/13	0.00	482.00	415.00	0.00	415.00
3/23/13	0.00	386.00	415.00	132.00	283.00

According to IWD, the total overpayment was \$981.00.

After determining that a discrepancy existed between the amounts reported by Lord and his employer, on September 5, 2013, IWD issued Lord a *Preliminary Audit Notice* advising him of the discrepancy and gave him an opportunity to respond. The post office returned the item of mail to IWD, marked, "moved, left no address."

On October 3, 2013, IWD issued a decision letter (reference 01) in which it concluded that from March 3, 2013 to March 23, 2013, Lord received an overpayment (\$981.00) of unemployment insurance benefits because he incorrectly reported wages earned. IWD will add a 15% penalty due to misrepresentation.

CONCLUSIONS OF LAW

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. See Iowa Code section 96.2.

An individual who is partially unemployed may receive unemployment insurance benefits if the individual is working less than the individual's normal full-time week for an employer and is earning less than the individual's weekly benefit amount plus fifteen dollars. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant's wages in the week that exceed 25% of the weekly benefit amount. See 871 Iowa Administrative Code (IAC) section 24.18.

Under Iowa law, if a claimant receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the claimant acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the claimant directly or by deducting the overpayment from any future benefits payable to the overpaid claimant. See 871 IAC section 25.8.

If a claimant is overpaid benefits as a result of misrepresentation [i.e., to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth See 871 IAC section 25.1] IWD 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. See Iowa Code section 96.16(4) and 871 IAC section 25.8(2).

Overpayment

In the case at issue, IWD presented credible evidence that Lord earned more from his employer during the three weeks in question than he reported. Lord failed to explain the discrepancy.

For the week ending March 9, 2013, Lord received \$386 in wages and \$415 in unemployment insurance benefits. Subtracting one-quarter (\$103) of his benefits from his wages is \$283. Deducting \$283 from his benefits is \$132. Because Lord was only entitled to receive \$132 in unemployment insurance benefits, he received an overpayment of \$283 for the week ending on March 9, 2013.

For the week ending March 16, 2013, Lord received \$482 in wages and \$415 in unemployment insurance benefits. Because Lord received in wages that exceeded his unemployment insurance benefits plus \$15, he received an overpayment of \$415 for the week ending on March 16, 2013.

For the week ending March 23, 2013, Lord received \$386 in wages and \$415 in unemployment insurance benefits. Subtracting one-quarter (\$103) of his benefits from his wages is \$283. Deducting \$283 from his benefits is \$132. Because Lord was only entitled to receive \$132 in unemployment insurance benefits, he received an overpayment of \$283 for the week ending on March 23, 2013.

In summary, the action of IWD establishing and requesting repayment of a claim (\$981.00) for an overpayment of unemployment insurance benefits received by Lord from March 3, 2013 to March 23, 2013 is AFFIRMED. 871 IAC section 25.8.

Misrepresentation

As early as June 2012, Lord exhibited a pattern of incorrectly reporting wages earned. For each of the 3 weeks at issue, Lord denied receiving gross wages when in fact, Lord received gross wages of between \$386 and \$482 each week from his employer. Absent evidence to the contrary, by consistently underreporting his weekly gross earnings, Lord misrepresented information, resulting in his receiving an overpayment of unemployment insurance benefits. 871 IAC section 25.1

The action of IWD concluding that Lord received an overpayment of unemployment insurance benefits due to misrepresentation and assessing a 15% penalty is AFFIRMED. Iowa Code section 96.16(4)"b" and 871 IAC section 25.8(2).

DECISION

IWD's decision dated October 3, 2013, reference 01, is AFFIRMED

CBT