

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

**Appeal Number:** 09-IWDUI-139  
**OC:** 02/10/08  
**Claimant:** Appellant (4)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**MARK FEMALI**  
**303 E. MAPLE ST. APT. 6**  
**CENTERVILLE, IA 52544-2242**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS 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, 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.

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(Administrative Law Judge)

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July 30, 2009

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(Dated and Mailed)

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

**STATEMENT OF THE CASE**

Mark Femali filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated June 25, 2009, reference 04. In this decision, the Department determined that Mr. Femali was overpaid \$217.18 in unemployment insurance benefits from November 23, 2008 through December 13, 2008. The decision states that the overpayment resulted from the claimant's failure to report earnings from Yule Custom Pumping Inc.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 9, 2009 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on July 13, 2009. On July 24, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Karen Von Behren represented the Department and presented testimony. Appellant Mark Femali appeared and presented testimony. Exhibits 1 through 5 were submitted by the Department and admitted into the record as evidence.

### **ISSUES**

Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits.

Whether IWD correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

### **FINDINGS OF FACT**

Mark Femali filed a claim for unemployment insurance benefits with an effective date of February 10, 2008. Mr. Femali was paid \$351 in unemployment benefits in the week ending November 29, 2008, \$360 in unemployment benefits in the weeks ending December 6, December 13, and December 20, 2008, and \$178.18 in unemployment benefits the week ending December 27, 2008. Mr. Femali's weekly benefit amount was \$360. (Exh. 3).

The Department conducted a routine audit of Mr. Femali's unemployment claim for the fourth quarter of 2008 and determined that Mr. Femali had three different employers during that time. The only employer who reported wages for the weeks that Mr. Femali received unemployment benefits was Yule Custom Pumping Inc. Yule reported that Mr. Femali received gross wages of \$787 in the week ending November 29, 2008 and \$138 in the week ending December 13, 2008. (Exh. 3, 4). For the week ending November 29, Mr. Femali reported having received \$99 in wages; for the week ending December 13, he reported receiving \$68. (Exh. 3). The employer submitted check stubs to the Department which verified that Mr. Femali earned \$786.50 in gross earnings for the pay period from November 20 through 26. The check for that period was dated November 26. Mr. Femali earned \$137.50 in gross earnings for the pay period from December 4 through December 10. The check for that period was dated December 12. (Von Behren testimony).

Based on the figures reported by the employer, the Department determined that Mr. Femali was overpaid \$399 in benefits. During the week ending December 27, 2008, Mr. Femali exhausted his unemployment insurance benefits. For this reason, he only received \$178.18 in benefits that week rather than his weekly benefit amount of \$360. The Department credited Mr. Femali with an underpayment for that week based on the fact that, had the benefits been correctly paid in the weeks ending November 29 and December 13, Mr. Femali would have had enough money remaining in his account to receive the full \$360 in that week. The underpayment was in the amount of \$181.82

Subtracting the underpayment from the overpayment, the Department determined there was a net overpayment of \$217.18.

Mr. Femali was prohibited after the week ending December 27, 2008 from accessing the Department's claims reporting system because, at that time, the Department believed – based on the wages reported by Mr. Femali – that his benefits had been exhausted. (Von Behren testimony).

The amount of the alleged overpayment, \$217.18, has now been withheld from Mr. Femali's unemployment benefits for the new benefit year.

## **REASONING AND CONCLUSIONS OF LAW**

### **A. Overpayment**

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD can recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD 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>

There was no allegation by Mr. Femali in this case that the employer's records were incorrect. Mr. Femali acknowledged at hearing that the amount of wages reported by the employer seemed correct. Given the wages reported by the employer, the Department correctly concluded that Mr. Femali should not have received the amount of benefits he did receive in 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>2</sup> Mr. Femali, then, could have earned up to \$375 in a week and still received some amount of unemployment benefits. 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.<sup>3</sup>

In Mr. Femali's case, he earned over \$375 in the week ending November 29, therefore he was not entitled to any benefits that week. The Department correctly determined that he was overpaid the full amount he was paid, which was \$351. In the week ending December 13, Mr. Femali earned only \$138, so he was still eligible to receive benefits. Applying the formula stated above, Mr. Femali was eligible to receive \$312. The Department correctly concluded he was overpaid by \$48 in that week.

The Department's representative explained at hearing that the Department applied an "exhaustion credit" for the week ending December 27. The exhaustion credit was

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<sup>1</sup> Iowa Code § 96.3(7)(a) (2009).

<sup>2</sup> Iowa Code § 96.19(38)(b)(1) (2009).

<sup>3</sup> 871 Iowa Administrative Code (IAC) 24.18.

applied because, had Mr. Femali correctly reported his wages, he would still have had benefits in his account and could have received his full benefit amount in that week. The difference between his full benefit amount and what he actually was paid that week is \$181.82. The Department credited Mr. Femali with an underpayment in that amount and reduced the net overpayment to \$217.18.

During the week ending December 27, when the Department originally determined Mr. Femali had exhausted his benefits, Mr. Femali had \$178.18 remaining in his account. Combined with the amounts the Department later determined Mr. Femali should not have received (\$351 for the week ending November 29 and \$48 for the week ending December 13), Mr. Femali should have still had \$577.18 in his account. The Department has already credited him for \$181.32. Notwithstanding that credit, Mr. Femali's account would still have had \$395.86 after December 27. The Department determined that Mr. Femali should not get a credit from the remaining money in his account because he did not file a claim for any week after December 27.

In order to receive weekly unemployment benefits, the Department's rules provide that individuals must complete a voice response claim each week. The individual is required to report, among other things, whether the individual earned wages or received benefits during the week in question.<sup>4</sup> Mr. Femali, however, was prohibited from calling in a claim after the week ending December 27 because the Department's claims reporting system will not allow a claim to be reported if a claimant has exhausted benefits.

The Department should have allowed Mr. Femali to present information regarding his employment status and other eligibility criteria in the weeks following December 27 in order to determine whether Mr. Femali would have been eligible for benefits that could have reduced his overpayment.

**B. Misrepresentation**

The Department initially determined that the overpayment was caused by misrepresentation on Mr. Femali's part. After hearing Mr. Femali's testimony at hearing regarding his confusion over his wages, the Department's representative concluded that the case should not have been classified as misrepresentation. The Department has conceded that the overpayment did not occur as a result of misrepresentation.

**DECISION**

Iowa Workforce Development's decision dated June 25, 2009, reference 3 is MODIFIED. The claimant has been overpaid benefits in the net amount of \$217.18. The overpayment was not due to the claimant's misrepresentation.

The Department shall take prompt steps to determine whether Mr. Femali would have been eligible for unemployment benefits in any of the weeks following December 27, 2008, when his benefits were originally thought to be exhausted. The fact that Mr.

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<sup>4</sup> 871 Iowa Administrative Code (IAC) 24.2(1)(g).

Femali did not call in a claim for any of those weeks shall not be a factor in determining eligibility since Mr. Femali was prohibited by the Department's system from making a claim.

Once the Department has made this determination, it shall issue a written decision. Mr. Femali shall have the right to appeal that decision when it is issued. If the Department concludes that Mr. Femali was eligible for benefits in the weeks following December 27 that would have reduced his overpayment, the Department shall take prompt steps to recalculate the overpayment and to refund Mr. Femali the amount that was withheld from his benefits in the current benefit year to offset the overpayment.

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