

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

**Appeal Number:** 08-IWDUI-032  
**OC:** 01/21/07  
**Claimant:** Appellant (1)

**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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**ERIC W CARTER**  
**PO BOX 23**  
**KNOXVILLE IA 50138**

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.

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

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.

DAN ANDERSON, IWD

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(Administrative Law Judge)

March 4, 2008

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(Decision Dated & Mailed)

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Section 96.16-4 - Misrepresentation  
Section 96.3-7 - Recovery of Overpayments

#### STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated November 8, 2007, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$482.00, because he failed to report wages earned with Parsons Brothers Concrete for the period from April 15, 2007 to June 16, 2007.

After due notice was issued, a hearing was scheduled for a telephone conference call on March 3,

2008. The claimant did not participate. Cindy Stroud, Investigator, participated for Iowa Workforce Development, Investigation and Recovery.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of January 21, 2007. The claimant claimed for and received unemployment benefits during the second quarter of 2007.

The department audited the claimant's unemployment claim for the second quarter of 2007, and a Parson Brothers concrete representative reported to the department the gross earnings paid to the claimant during the period from April 1, 2007 to June 23, 2007. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department determined the claimant had a net overpayment of benefits in the amount of \$482 that involved six-weeks of claims. Although the claimant had an under-payment of \$167 for the week ending June 23<sup>rd</sup>, he had five-weeks of overpayment that totaled \$649. The claimant failed to report any wages for the weeks ending April 21, April 28, and June 16 while receiving benefits of \$190 for each week. The claimant had earnings of \$340, \$50, and \$160 for these weeks. The claimant under-reported his earnings for the weeks ending May 5, (\$63 v. \$390), and May 12 (\$68 v. \$340), 2007.

Investigator Stroud mailed a notice to the claimant regarding the \$482 overpayment, but he failed to respond. Stroud concluded the claimant misrepresented his claim by failing to report his work and wages for three-weeks, and substantially under-reporting his work for two-weeks.

The claimant was not available when called for the hearing.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$482, and if so whether it is the result of misrepresentation.

#### **Iowa Code Section 96.16-4 provides:**

4. Misrepresentation. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

**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 \$482 for the 5-weeks ending June 23, 2007 pursuant to Iowa Code section 96.16-4. The department established the amount of the overpayment, and the claimant failed to offer any explanation as to why he failed to report work/wages for three of the five weeks, and why he substantially under-reported his wages for the other two weeks.

**DECISION:**

The decision of the representative dated November 8, 2007, reference 02, is AFFIRMED. The claimant is overpaid benefits \$482 due to misrepresentation.

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