

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

**Appeal Number:** 09-IWDUI-155  
**OC:** 5/25/08  
**Claimant:** (4)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**JEREMY PEACOCK**  
**128 E. 29<sup>th</sup> STREET**  
**DES MOINES IA 50317**

**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.

Jean M. Davis  
\_\_\_\_\_  
(Administrative Law Judge)

September 29, 2009  
\_\_\_\_\_  
(Decision Dated & Mailed)

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Section 96.3(7) - Recovery of Overpayments

Section 96.16(4) – Misrepresentation

**STATEMENT OF THE CASE:**

The claimant Jeremy Peacock, filed an appeal from an Iowa Workforce Development (Department) decision dated July 14, 2009, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$1204.00, based upon a determination that the claimant incorrectly reported wages from Product Development Corporation and Dobbs Temporary Services.. The claimant appealed that decision stating agreement disagreement with amount of the overpayment assessed.

A notice of hearing was issued in this case on July 31, 2009 establishing that the case would be heard on August 11, 2009. Before the scheduled hearing, the representative for the Respondent requested a continuance of the hearing citing a conflict for the date and time of the hearing. The Respondent's request for continuance was granted and this case was rescheduled to be heard on August 18, 2009.

The rescheduled hearing in this case commenced on August 18, 2009. However, during the initial testimony of the Respondent's representative, it was determined that the Appellant did not have copies of the Respondent's proposed exhibits for this case. In order to provide the Respondent with additional time to provide the Appellant with copies of the proposed exhibits, this case was continued to August 31, 2009.

The contested case hearing in this case was completed on August 31, 2009 and was heard by Administrative Law Judge Jean M. Davis. The Appellant Jeremy Peacock appeared and was self represented. The Respondent appeared by Investigator Irma Lewis. Both Mr. Peacock and Ms. Lewis provided testimony. In addition, the Respondent offered Exhibit A, which was admitted into evidence.

When the hearing reconvened on August 31, 2009, the Respondent moved to dismiss the claim of misrepresentation in this case. That Motion was Granted and the claim of misrepresentation is hereby DISMISSED. Based upon the evidence submitted, the assessed overpayment shall be AFFIRMED.

#### **FINDINGS OF FACT:**

The administrative law judge, having examined all of the evidence in the record, finds that: The Appellant filed a claim for unemployment benefits with an effective date of May 25, 2008. The Appellant was determined eligible for benefits. The Appellant's weekly benefit amount was established at \$301.00 per week. At this same time, the Appellant was advised of the requirement that he report earned income to the Respondent to determine the effect of the earnings on the claimant's weekly benefit amount. In addition, the Appellant was instructed by the Respondent to file his claim reports using an automated telephone reporting system.

After he started receiving unemployment compensation benefits, the Appellant also secured employment from both Product Development Corporation and Dobbs Temporary Service. When working for Product Development Corporation, the Appellant delivered phone books. When working for Dobbs Temporary Service, the Appellant ran a press. From both of these employers, the Appellant earned wages.

The Respondent Department received information of earned income reported under the Appellant's social security number. Under the Respondent's current system, social security numbers are crossed matched for reports of earned income. Whenever earned income is reported under the social security number of a person who is receiving unemployment insurance benefits, an investigation is triggered.

As part of the investigation conducted in the audit concerning the Appellant's earnings, the Respondent contacted both Product Development Corporation and Dobbs Temporary Service. Both employers were asked to verify any earned income paid to the Appellant. Product Development Corporation reported that the Appellant had earnings in the amount of \$763.00 for the week ending November 29, 2008, \$1,076.00 for the week ending December 6, 2008, and \$817.00 for the week ending December 13, 2008. Dobbs Temporary Services reported that the Appellant had earnings in

the amount of \$391.00 for the week ending October 18, 2008 and \$388.00 for the week ending October 25, 2008. As a part of the audit in this case, the Respondent Department also reviewed earned incomes reports filed by the Appellant for these same weeks. Ms. Lewis determined that the Appellant failed to report earnings for all of the weeks except the week ending October 18, 2008.

Based upon the Appellant's earnings, as verified by his employers, the Department calculated that he was overpaid \$1,204.00 (4 weeks at \$301.00 per week) in unemployment compensation benefits for the weeks ending October 25, 2008, November 29, 2008, December 3, 2008 and December 13, 2008.

At the hearing the Appellant asserted that his employers erred in the reports submitted to the Respondent. The Appellant testified that he earned less than the amount reported. The Appellant also stated that he did report his earning to the Respondent. Ms. Lewis testified that the Respondent's records do not reflect any reports from the Appellant except the report of earnings made the week of October 18, 2009. In addition, Ms. Lewis stated that under the Respondent's system for automated reporting of earned income, if the Appellant had reported his earnings for the other weeks, the system would have record the amount reported as had been done for the week of October 18, 2008.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant is overpaid benefits \$1,204.00.

#### **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 \$1,204.00 for the weeks determined by the Respondent. The Appellant had earned income which made him ineligible for the unemployment insurance he received for the same weeks. The Appellant's earnings were verified by his employers. The Appellant's testimony that both employers committed errors in their respective reports to the Respondent, in the absence of documentary evidence in support of this assertion, does not provide a basis on which to disturb the Respondent's determination. The Respondent has established the existence of an overpayment based upon the records submitted by the Appellant's employer which earnings paid to the Appellant. On this record, there is no basis on which to disturb the prior decision that the claimant was overpaid.

#### **DECISION:**

The decision of the representative dated July 14, 2009, reference 03, is MODIFIED by

rescinding the determination that the overpayment was based upon misrepresentation and AFFIRMED as to the assessed overpayment. The claimant is overpaid benefits \$1,204.00.