

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

**Appeal Number:** 10-IWDUI-281-3  
**OC:** 2/15/09  
2/17/08  
1/07/07

**Claimant:** Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**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.*

**JEFFREY CHAMBERS**  
**516 15<sup>th</sup> STREET SE**  
**CEDAR RAPIDS, IA 52403**

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

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATION AND RECOVERY**  
**150 DES MOINES STREET**  
**DES MOINES IA 50309**

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.

DAN ANDERSON, IWD

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)

November 22, 2010

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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

Claimant Jeffrey Chambers filed appeals from three Iowa Workforce Development decisions dated August 3, 2010, reference 01, reference 01, reference 03, which held that he had been overpaid unemployment benefits in the total amount of \$6,638.00, because he failed to report wages earned with Gee Asphalt Systems, Inc. during the periods from January 27, 2007

through April 14, 2007, from December 14, 2008 through December 27, 2008, and from February 15, 2009 through December 12, 2009. The decisions further held that the overpayments were due to Mr. Chambers' misrepresentation.

These cases proceeded to a hearing by telephone on November 19, 2010. Appellant Jeffrey Chambers did not appear. Three notices of hearing were sent to the appellant's address of record, which was the same address listed on his appeal requests. These notices were not returned as undelivered. Investigator Irma Lewis appeared and testified for Iowa Workforce Development (IWD), Investigation and Recovery. The packet of documents submitted by Ms. Lewis labeled Exhibits A and B, entered the record. In the absence of the appellant, the presiding officer chose to proceed with the hearing, take evidence and render a decision pursuant to Iowa Code 17A.12(3).

### FINDINGS OF FACT

These appeals from three IWD decisions with the same date resulted from a single audit that encompassed claims from three years. (Lewis testimony). This audit, Exhibit A revealed that Jeffrey Chambers filed claims for unemployment benefits and reported income for periods in which his employer, Gee Asphalt Systems, Inc. reported different income for him as follows:

<b>Week Ending</b>	<b>Wages Reported Claimant/Employer</b>	<b>Benefits Paid/Entitled</b>	<b>Overpayment</b>
February 3, 2007	\$ 0/818	379/0	379
April 7, 2007	0/233	379/240	139
April 14, 2007	0/753	379/0	379
December 20, 2008	0/332	393/159	234
December 27, 2008	0/1770	393/0	393
February 21, 2009	0/120	409/391	18
February 28, 2009	0/151	409/360	49
April 25, 2009	0/271	409/240	169
May 2, 2009	0/124	409/387	22
May 9, 2009	0/523	409/0	409 + 25 stimulus
May 16, 2009	50/310	409/201	208
May 23, 2009	100/395	409/116	293
May 30, 2009	0/54	409/409	0
August 29, 2009	0/209	409/302	107
September 5, 2009	0/419	409/0	409 + 25 stimulus
September 12, 2009	0/1166	409/0	409 + 25 stimulus
September 19, 2009	0/933	409/0	409 + 25 stimulus
September 26, 2009	0/539	409/0	409 + 25 stimulus
October 3, 2009	0/543	409/0	409 + 25 stimulus
October 10, 2009	0/264	409/247	162
October 17, 2009	0/174	409/337	70
October 24, 2009	0/558	409/0	409 + 25 stimulus
October 31, 2009	0/279	409/232	177
November 7, 2009	0/904	409/0	409 + 25 stimulus
December 12, 2009	0/617	409/0	<u>409 + 25 stimulus</u>
			6638.00

Based on the wages reported by Gee Asphalt Systems, Inc., IWD determined that Mr. Chambers received a total of \$6,638 in benefits and stimulus payments to which he was not entitled. (Exhibit A; Lewis testimony).

IWD Investigator Irma Lewis mailed a notice to Mr. Chambers on July 14, 2010 notifying him of the audit and the potential overpayment of \$6,638 and offering him an opportunity to provide proof of his earnings. Mr. Chambers failed to respond. (Exhibit A; Lewis testimony).

Upon receipt of the appellant's request to appeal the three decisions, Ms. Lewis contacted the employer, Gee Asphalt Systems, Inc., to request confirmation of the income amounts reported earlier. The employer responded with spreadsheets entitled "Employer's Statement of Earnings", which confirmed the previous amounts. The employer certified the accuracy of these spreadsheets. (Exhibit B; Lewis testimony).

Investigator Lewis noted that the appellant had to make weekly calls or internet claims to receive benefits. On each of the 25 weeks that he reported discrepant income, the appellant received a warning which stated,

"WARNING, Attempting to claim and receive unemployment insurance benefits by entering false information can result in loss of benefits, fines and imprisonment. To show you understand the warning, please enter one now."  
(Exhibit A)

In order to successfully process his claims, the appellant would have had to signify that he understood the warning on each occasion. (Exhibit A; Lewis testimony).

### **CONCLUSIONS OF LAW**

The issue is whether Jeffrey Chambers has been overpaid benefits in the amount of \$6,638 and, if so, whether the overpayment was the result of Mr. Chambers' misrepresentation.

Iowa law provides that the division of job service must recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.<sup>1</sup> If any benefits were received due to misrepresentation, the department is entitled to file a lien in the amount of the overpayment in favor of the state against any property owned by the benefits recipient.<sup>2</sup>

The uncontested evidence in this case demonstrates Jeffrey Chambers did receive overpayment of unemployment benefits. A preponderance of the evidence supports IWD's determination that he received overpaid benefits in the amount of \$6638.

That leaves the question whether the overpayment is due to misrepresentation.

The evidence shows Mr. Chambers consistently failed to report any earnings whatsoever

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<sup>1</sup> Iowa Code section 96.3(7).

<sup>2</sup> Iowa Code section 96.16(4).

week after week for 23 of the 25 weeks in question even though he was working and earning wages during that time. The two weeks in which he did report income were underreported. On each occasion he received a warning regarding consequences for false information and he signified that he understood. I find that Mr. Chambers made claims for benefits during weeks in which he earned wages and that he failed to report those wages earned in an attempt to obtain benefits to which he was not entitled. The department's decision that the overpayment was due to misrepresentation should be affirmed.

### **DECISION**

The three decisions dated August 3, 2010, reference 01, reference 01 and reference 03, are AFFIRMED. The claimant has been overpaid benefits in the amount of \$6,638 due to misrepresentation.

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