

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

**Appeal Numbers:** 09-IWDUI-116  
09-IWDUI-117  
09-IWDUI-118

**OC:** 12/14/08  
**Claimant:** Appellant (2)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**FREDERICK BROWN  
22917 DOGWOOD LOOP  
ONAWA, IA 51040**

**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

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

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)

June 24, 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  
Iowa Code section 96.4-3 – Able and Available to Work

**STATEMENT OF THE CASE**

Frederick Brown filed an appeal from three decisions issued by Iowa Workforce Development (IWD). In the first decision, dated May 20, 2009, IWD determined that Mr. Brown was ineligible to receive unemployment insurance benefits from April 12, 2009 through April 25, 2009 because he did not meet the availability requirements of

the law. The second and third decisions, both issued May 29, 2009, found that Mr. Brown was overpaid by a total of \$868 for unemployment insurance benefits received between April 12, 2009 and April 25, 2009. IWD found that the overpayment occurred as a result of misrepresentation on Mr. Brown's part.

The cases were transmitted from IWD to the Department of Inspections and Appeals on June 4, 2009 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on June 9, 2009. On June 19, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. The parties present at the hearing were investigator Larry Finley, representing IWD, and claimant Frederick Brown. IWD submitted Exhibits 1 through 5, 7, and 8, which were admitted as evidence in the case.

### **ISSUES**

1. Whether IWD correctly determined that the claimant did not meet the requirement of being available to work.
2. Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits.
3. Whether IWD correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

### **FINDINGS OF FACT**

Frederick Brown began working for Winkler Roofing in the fourth quarter of 2007. Mr. Brown filed a claim for unemployment insurance benefits with an effective date of December 14, 2008 based on a work slowdown at Winkler Roofing. During the 17 weeks from December 14, 2008 through April 11, 2008, Mr. Brown reported wages to IWD each week from Winkler Roofing. His weekly wages during that time period ranged from \$108 to \$792.

When he filed his claim in December, 2008, Mr. Brown was informed that the work search requirement was waived for him. He was not required to search for work, but he was required to report earnings each week to IWD.

On April 10, 2009, a Friday, Mr. Brown worked a half-day for Winkler Roofing. The superintendent informed the employees that he did not know when he would have another job for them. The superintendent told the employees to call in on the following Monday to see if there was work. Mr. Brown called in on Monday April 13 and was told there was no work, but to keep in contact throughout the week. Mr. Brown called again on Wednesday April 15 and was again told that there was no work. He continued this pattern throughout the following week. The last time he spoke with anyone from Winkler Roofing was on Wednesday April 22. He was again told that there was no work. The next week, Mr. Brown received a letter stating that he was being laid off from Winkler Roofing effective April 27, 2009.

On May 14, 2009, Michael Winkler of Winkler Roofing sent a letter to Mr. Finley stating that Mr. Brown was in Georgia for the two weeks from April 12, 2009 to April 25, 2009 because his father was ill. Mr. Winkler stated he did not believe Winkler's account should be charged for unemployment insurance during those two weeks.

Mr. Finley sent a Notice of Fact-Finding Interview to Mr. Brown on May 14, 2009 setting up a telephone appointment on May 19, 2009 at 8:45 AM. Mr. Finley was unable to get ahold of Mr. Brown at that time.

Mr. Brown's father, who lived in Georgia, died on May 9, 2009. Although Mr. Brown had planned to go visit him while he was ill, he was financially unable to do so. Mr. Brown was not in Georgia from April 12 through 25, as Mr. Winkler alleged. Mr. Brown left for Georgia on the night of May 15 for his father's funeral, which took place on May 16.

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

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>

Here, the alleged overpayment stems from IWD's determination that Mr. Brown was not eligible for benefits from April 12 through 25 because he was not available for work owing to being out of the state of Iowa. In order to receive unemployment insurance benefits, an individual must be able to work, available for work, and be earnestly and actively seeking work.<sup>2</sup> The last requirement – to earnestly and actively seek work – was waived in Mr. Brown's case. He was, however, required to be able to and available for work.

IWD's determination that Mr. Brown was out of the state during the two-week period from April 12 through April 25, 2009 and therefore not available for work was incorrect. Mr. Brown credibly testified at the hearing that he did not go to Georgia until May 15, after his father had passed away. Although he planned to go earlier while his father was ill, he was financially unable to do so. Mr. Brown indicated that Mr. Winkler may have believed that he was in Georgia because he had previously expressed that he was planning to go. He was, however, unable to do this because of his financial situation.

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

<sup>2</sup> Iowa Code § 96.4(3) (2009).

Mr. Finley testified at hearing that this employer is credible and that he knows of no reason that this employer would falsify information to the Department. Unfortunately, the employer was not present at the hearing and therefore there was no ability to probe the roots of the employer's belief that Mr. Brown was in Georgia during the two-week time period indicated. Mr. Brown posited a plausible explanation – that Mr. Winkler believed this was so because Mr. Brown had previously expressed the desire to go. Mr. Brown, however, presented credible testimony that he called in several times over the two-week period that Mr. Winkler claimed he was in Georgia and expressed on each occasion his desire and availability for work.

Mr. Finley noted at hearing Mr. Brown's failure to be available for the fact-finding interview as evidence of his untruthfulness regarding the issues under appeal. I note, however, that the fact-finding notice was mailed to Mr. Brown on May 14, 2009, one day before Mr. Brown left for Georgia to attend his father's funeral. Under these circumstances, it is not difficult to understand why Mr. Brown was not available for the fact-finding interview. I did not find his lack of availability for the fact-finding interview to impact adversely on his credibility in this matter.

Because Mr. Brown was able and available for work, he was not overpaid unemployment benefits. The Department's determination that Mr. Brown was overpaid because of misrepresentation must be reversed.

Although this decision rests on the factual determination that Mr. Brown was not in fact in Georgia during the two-week time period at issue, even if Mr. Brown had been in Georgia, the requirement that a claimant be able and available for work is waived if an individual is temporarily unemployed.<sup>3</sup> For purposes of this waiver, an individual is temporarily unemployed if, for a period of no more than four consecutive weeks, the individual is unemployed due to a plant shutdown or lack of work.<sup>4</sup> The individual's employment must be temporarily suspended, but not terminated. This was exactly the situation that Mr. Brown found himself in during the two-week period from April 12 through April 25. He had been told by his employer that there was no present work, but he had not been terminated. He was not informed that he was laid off until April 27, 2009. Consequently, even if Mr. Brown had been in Georgia and been unable to work, he would not have been ineligible for unemployment benefits during the two-week time period at issue.

## **DECISION**

Iowa Workforce Development's decisions dated May 20, 2009 and May 29, 2009 are REVERSED. The claimant was not unavailable for work, therefore he was not overpaid unemployment benefits. IWD shall take any action necessary to implement this decision.

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<sup>3</sup> Iowa Code §§ 96.4(3); 96.19(38)(c) (2009).

<sup>4</sup> Iowa Code § 96.19(38)(c) (2009).