

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

**Appeal Number:** 07-IWDUI-083  
**OC:** 03/11/0  
**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

**ROBERT A SCOTT**  
**6120 435<sup>TH</sup> STREET**  
**PRIMGHAR IA 51245-7566**

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)

June 29, 2007

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(Decision Dated & Mailed)

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Section 871 IAC 26.8(2) – Withdrawals and Postponements  
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 May 23, 2007, reference 06, which held that the claimant was overpaid unemployment benefits in the amount of \$203.00, because he failed to report wages earned with Den Hartog Industries Inc., for the week ending March 31 , 2007.

After due notice was issued, a hearing was scheduled for a telephone conference call on June 26,

2007. The claimant did not participate. Larry Finley, 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 March 11, 2007. The claimant claimed for and received unemployment benefits during the first quarter of 2007.

A representative for Den Hartog Industries reported to the department that the claimant began employment with the business on March 19, 2007. When requested by the department, the representative reported the gross earnings paid to the claimant during the period from the date he commenced employment to March 31, 2007. The department compared the employer's wage report against the claimant's claims for the same weeks.

The employer representative reported the claimant worked twenty-five (.5) hours and earned gross wages of \$274 for the week ending March 31, 2007. The claimant reported no work and wages for the week ending March 31, and he was paid a benefit of \$285. Based on the employer's wage report, the claimant was entitled to a benefit of \$82 that causes an overpayment of \$203.

Investigator Finley mailed a notice to the claimant on April 11, 2007 regarding the \$203 overpayment, but the claimant failed to respond. Finley concluded the claimant misrepresented his claim by failing to report his work and wages when claiming for benefits.

After the claimant received the hearing notice, he called in and left a message to request a re-scheduling of the hearing due to a work conflict. The administrative law judge responded to the recorded message by calling for the claimant at the phone number he provided, and when he did not answer, a recorded message was issued. The claimant was advised that he needed to call back and offer more information about the re-scheduling request in order to establish a good cause for postponement, and whether re-scheduling to a different date and time would alleviate the problem. The claimant was advised that the hearing would not be postponed and re-scheduled unless he responded. The claimant failed to call in after the message was provided.

The claimant's contention that he did not receive any benefit on his current claim is correct, but he was given credit by a department-offset procedure to apply the \$285 benefit upon an outstanding overpayment of \$858 (February 26, 2006 claim).

The claimant did not call in and provide a telephone number to participate in the hearing.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the hearing should have been postponed and re-scheduled.

#### **871 IAC 26.8(17A,96) Withdrawals and postponements.**

26.8(2) A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest.

The administrative law judge concludes that the claimant failed to establish a good cause for

postponement and re-scheduling of the hearing. The claimant was advised by a recorded message that he needed to provide more information to establish a good cause for postponement and re-scheduling of the telephone hearing, but he failed to do so. The claimant was advised that the hearing would not be postponed unless he provided that information.

The further issue is whether the claimant is overpaid benefits \$203, 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 \$203 for the week ending March 31, 2007 pursuant to Iowa Code section 96.16-4. The claimant failed to report his work and wages for the week ending March 31 that is misrepresentation. While the claimant did not receive (in hand) the weekly benefit, it was applied as a credit against an outstanding overpayment. Since the issuance of this decision, the credit is rescinded, and the outstanding balance of the overpayment is re-instated.

**DECISION:**

The decision of the representative dated May 23, 2007, reference 06, is AFFIRMED. The claimant is overpaid benefits \$203 due to misrepresentation.

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