

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 13-IWDUI-065
OC: October 16, 2011
Claimant: Appellant (1 – affirmed)

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, 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.

Darcy Spain
1532 Kimberly Drive
Waterloo, IA 50701

STATE CLEARLY

Iowa Workforce Development
Irma Lewis, 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.

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.

Joe Walsh, IWD

(Administrative Law Judge)

April 5, 2013

(Decision Dated & Mailed)

ISSUE

Whether IWD correctly determined that claimant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated – Iowa Code section Iowa Code section 96.3(7).

STATEMENT OF THE CASE

Claimant Darcy Spain filed an appeal from a decision by Iowa Workforce Development (IWD) finding she should repay unemployment benefits received from April through June of 2012 due to a failure to report all wages received during that period. The case was transmitted to my office and set for a hearing by telephone conference call on March 28, 2013 before Administrative Law Judge Jeffrey Farrell. Irma Lewis, an investigator with IWD, testified for the agency. IWD's exhibit A was admitted into the record. The administrative file was also considered. Claimant did not appear.

FINDINGS OF FACT

Claimant received unemployment benefits from April 7, 2012 through June 16, 2012. In October of 2012, IWD conducted an audit of benefits paid to claimant. IWD found that respondent had received wages from Cedar Falls Construction during the second quarter of 2012. IWD send a request for earnings information to Cedar Falls Construction. The employer responded by reporting claimant worked during the first and third weeks of April, and each week from the second week of May through the second week of June. The employer also provided exact earnings paid during the second quarter. (Exhibit A; Lewis testimony).

Claimant was required each week to report her earnings to IWD through a phone call-in system. IWD reviewed its system and found that claimant reported no wages during any of the weeks. In December of 2012, Ms. Lewis sent a request for information to claimant, asking her to respond to the information received from the employer and the IWD system. On or around January 7, 2013, claimant sent a response. She admitted claiming benefits in April after starting her job. She stated that her employer told her she could continue to claim until work was more steady. She alleged that her roommate may have continued to claim unemployment for her after she started steady work, as she was on the road and only home every other week. Ms. Lewis responded by testifying that claimants are given a personal PIN that is not to be given to other persons, so claimants are responsible for all reports to the call-in system. (Exhibit A; Lewis testimony).

Ms. Lewis found that claimant would not have received any unemployment during the weeks she worked in April through June, because she received sufficient earnings during each week she worked. Claimant was entitled to unemployment in other weeks that she performed no work. Ms. Lewis calculated the overpayment by seeking repayment of all benefits paid during the weeks that claimant worked. The total amount claimed is \$1,191.74. (Lewis testimony; exhibit A).

REASONING AND CONCLUSIONS OF LAW

The only issues are whether IWD correctly ordered repayment of benefits and the imposition of an administrative penalty. Under Iowa law, if a person receives unemployment insurance benefits during a period the person is ineligible, IWD must 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 future benefits.¹ If a claimant is overpaid benefits as a result of misrepresentation, IWD may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant's real or personal property and rights to property.²

There is no dispute that claimant received benefits while ineligible. Claimant was working a job while he received unemployment. She admitted as much in a letter she wrote to Ms. Lewis. I cannot accept claimant's explanation that she continued to receive unemployment because her roommate filed false reports on her behalf. Each claimant has a PIN and must be able to provide social security information to file reports on the system. Also, benefits were payable to claimant. It is not believable that she was unaware of the false reports. IWD correctly sought repayment.

¹ Iowa Code section 96.3(7)(a).

² 871 IAC 24.18.

DECISION

IWD correctly determined that claimant was overpaid unemployment in the amount of \$1,191.74.00. Claimant shall pay the full amount of the claim. IWD may take any action authorized by law to collect the amount due.