

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

**Appeal Number: 12IWDUI086**

**OC: 2/13/11**

**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 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.

**KENNETH E. VANDERLINDEN  
1731 HIGHWAY G62  
KNOXVILLE, IA 50138-8916**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATIONS 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.

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

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(Administrative Law Judge)

March 27, 2012

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(Decision Dated & Mailed)

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## STATEMENT OF THE CASE

Kenneth E. Vanderlinden filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated January 9, 2012 (reference 02). In this decision, the Department determined that Mr. Vanderlinden was overpaid \$741 in unemployment insurance benefits for two weeks between October 2, 2011 and October 15, 2011. The decision states that the overpayment resulted from the claimant failing to, or incorrectly reporting wages from South Central Coop.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on February 20, 2012 to schedule a contested case hearing. A Notice of Hearing was issued on February 24, 2012 setting the hearing for March 27, 2012 at 8:00 a.m. and instructing the parties how to participate by way of the toll free telephone conference calling system.

On March 27, 2012, a telephone appeal hearing was held before Administrative Law Judge John M. Priester. Investigator Jane Connor represented the Department and presented testimony. The administrative file was admitted into the record as evidence. Appellant Kenneth Vanderlinden did not appear and the hearing was held in his absence.

### **ISSUES**

1. Whether the Department correctly determined that the Appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.
2. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

### **FINDINGS OF FACT**

Kenneth Vanderlinden filed a claim for unemployment benefits with an effective date of February 13, 2011. Mr. Vanderlinden made claims for and received unemployment benefits during periods of 2011.

The Department conducted an audit of Mr. Vanderlinden's unemployment claim for the period of October 2011. South Central reported that Mr. Vanderlinden earned wages in the week of October 2, 2011 for \$633 and for the week of October 9, 2011 for \$633. When making claims for those weeks, Mr. Vanderlinden did not report any wages for the first week and only \$135 for the second week. Mr. Vanderlinden's weekly benefit amount during this time period was \$390 and \$351.

After determining the discrepancy between the amounts reported by Mr. Vanderlinden and his employer, the Department sent Mr. Vanderlinden a preliminary audit notice on December 15, 2011. That notice advised him of the discrepancy and advised him to provide information concerning his wages earned during this period.

On January 9, 2012, the Department issued a decision to Mr. Vanderlinden notifying him that he was overpaid by \$741 as a result of misrepresentation.<sup>1</sup> When Mr. Vanderlinden filed his unemployment insurance claims, he was asked each week whether he worked. In each of the two weeks at issue here, Mr. Vanderlinden responded no to that question for the first week even though he worked and earned wages from South Central Coop during the first week. The second week Mr. Vanderlinden underreported his wages. Based on Mr. Vanderlinden's response each week to the question of whether he worked, the Department determined that the overpayment was a result of misrepresentation.

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<sup>1</sup> While the Department's decision does not specifically state that the overpayment was the result of misrepresentation, the decision states that it was made under section 96.16(4) of the Iowa Code. That section relates to overpayments made as a result of misrepresentation and the consequences the Department may impose.

## **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, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department 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>2</sup>

If a claimant is overpaid benefits as a result of misrepresentation, the Department 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.<sup>3</sup>

### **A. Overpayment**

The evidence in this case supports the Department's conclusion that Mr. Vanderlinden earned wages that he did not report during the weeks in question. I find the Department's evidence regarding Mr. Vanderlinden's gross earnings during the weeks in question to be credible.

An individual who is partially unemployed may receive unemployment insurance benefits if he is working less than his normal full-time week for an employer and is earning less than her weekly benefit amount plus fifteen dollars.<sup>4</sup> Mr. Vanderlinden reported earning nothing the week of October 2, 2011 and \$136 the week of October 9, 2011. In fact he earned \$633 each week.

Under these circumstances, the Department correctly concluded that Mr. Vanderlinden was overpaid unemployment insurance benefits in the amount of \$741.

### **B. Misrepresentation**

A finding of misrepresentation is supported when an individual receives benefits while not eligible "by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact."<sup>5</sup> The evidence in the case supports the conclusion that Mr. Vanderlinden misrepresented whether he was working during the two weeks in question and the amount of wages he earned in each of those weeks. Under these circumstances, the Department's conclusion that the overpayment was a result of misrepresentation was correct.

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<sup>2</sup> Iowa Code § 96.3(7)(a) (2011).

<sup>3</sup> 871 Iowa Administrative Code (IAC) 24.18.

<sup>4</sup> Iowa Code § 96.19(38)(b)(1) (2011).

<sup>5</sup> Iowa Code § 96.16(4) (2011).

**DECISION**

Iowa Workforce Development's decision dated January 9, 2012, reference 02, is **AFFIRMED**. The claimant has been overpaid benefits in the amount of \$741 due to misrepresentation.

jmp