

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

Appeal Number: 09-IWDUI-236

OC: 02/15/09

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, 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.

**TIMOTHY M. HULL
401 LAVONNE STREET
GREEN, IA 50636**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATION 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.

DAN ANDERSON, IWD

(Administrative Law Judge)

December 24, 2009

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE

Claimant Timothy M. Hull filed an appeal from an Iowa Workforce Development decision dated November 18, 2009, reference 01, which held he had been overpaid unemployment benefits in the amount of \$2,775.00, because he failed to report short-term disability payments from American Tool & Engineering, Inc.

A hearing was scheduled by way of telephone conference call on December 24, 2009. At the time of hearing, Mr. Hull appeared and participated on his own behalf. Iowa Workforce

Development was represented by Investigator Mary Piagentini. The documents in the administrative record, marked as pages 1-9 were admitted into evidence.

FINDINGS OF FACT

Timothy M. Hull filed a claim for unemployment benefits with an effective date of February 15, 2009. Mr. Hull made claim for and received unemployment benefits during the first quarter of 2009.

The department audited the Mr. Hull's unemployment claim for the first quarter of 2009, and American Tool & Engineering reported to the department that Mr. Hull received \$533 weekly in short-term disability payments from the week ending February 21, 2009 through the week ending April 4, 2009. Mr. Hull did not report this income when he submitted his weekly claim through Workforce Development's web site.

From the week ending February 21, 2009 through the week ending April 4, 2009, Mr. Hull received unemployment compensation in the total amount of \$2,625. Additionally, from the week ending February 28, 2009 through the week ending April 4, 2009, Mr. Hull received additional stimulus package payments totaling \$150.

Because Mr. Hull's disability payments exceeded his weekly unemployment insurance benefit amount plus \$15, the department determined he should have not have received any unemployment benefits or stimulus payments during the period in question. Accordingly, on November 18, 2009, Workforce Development issued a decision holding Mr. Hull was overpaid benefits in the amount of \$2,775.

At hearing, Mr. Hull admitted an overpayment occurred, but testified he was unaware he needed to report his temporary disability. He stated that his employer did not inform him he should report the income and he did not see any question on Workforce Development's web site asking about receipt of disability payments.

Additionally, Mr. Hull noted that he is unable to repay any overpayment at this time. He testified that his wages have been cut by 10% and his hours have decreased. He has been informed he is about to be laid off again and he no longer receives disability payments. Mr. Hull suffers from quadriplegia and requires assistance with all daily cares. He does not receive any government help and pays for all assistance he receives. Mr. Hull testified that he has recently undergone a divorce which was costly and that he is over-extended with regard to credit.

CONCLUSIONS OF LAW

The issue is whether Timothy M. Hull has been overpaid benefits in the amount of \$2,775.

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.¹ If any benefits were received

¹ Iowa Code section 96.3(7).

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.²

The uncontested evidence clearly demonstrates that Mr. Hull was overpaid benefits in the amount of \$2,775. Workforce Development's rules provide that temporary disability payments received through an employer are considered as wages.³ Further, because Mr. Hull received payments in excess of his weekly benefit amount (\$375) plus \$15, the rules specifically provide that he was ineligible to receive unemployment during the weeks he received those payments.⁴ Mr. Hull received total benefits, including stimulus benefits in the amount of \$2,775 during the weeks he received disability payments. Therefore, the department's decision must be affirmed.

I do have sympathy for Mr. Hull's plight. However, I am bound by Workforce Development's rules. I do encourage Mr. Hull to contact the Iowa Department of Human Services to determine what benefits may be available to him through that agency.

DECISION

The decision of the representative dated November 18, 2009, reference 01, is AFFIRMED. The claimant has been overpaid benefits in the amount of \$2,775.

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² Iowa Code section 96.16(4).

³ *Fully deductible payments from benefits.* The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:
 a. Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.

871 IAC 24.13(3).

⁴ An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings.

871 IAC 24.18(96).