

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

Appeal Number: 11IWDUI021-2
OC: 01/03/10
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JOSHUA E. BASTING
2822 HIGH POINT DRIVE
DAVENPORT, IA 52806-1630

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

DAN ANDERSON, IWD

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

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.

(Administrative Law Judge)

February 28, 2011
(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation
871 Iowa Administrative Code 24.2(1) – Failure to Report

STATEMENT OF THE CASE

Joshua E. Basting filed an appeal from two decisions issued by Iowa Workforce Development (IWD). A decision dated November 24, 2010; reference 05, determined that Mr. Basting was overpaid \$2,196 in unemployment insurance benefits for six weeks between March 28, 2010, and June 12, 2010. The decision stated that the overpayment resulted from the claimant incorrectly reporting wages from Cornerstone Construction.

A decision dated December 3, 2010; reference 06, determined that Mr. Basting was ineligible to receive unemployment insurance benefits because he failed to report to the local IWD office when required to do so.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on January 21, 2011 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on February 4, 2011. Notice went to the claimant at his address of record, which is also the address on his appeal request. On February 28, 2011, a telephone appeal hearing was held before Administrative Law Judge Robert H. Wheeler. Irma Lewis represented IWD and testified. The appellant appeared pro se and testified. Documents including the IWD decisions dated November 24 and December 3, 2010, a Decision Overpayment Worksheet, a Preliminary Audit Notice, a letter from IWD to the claimant dated November 8, 2010, an Agreement To Reimburse Workforce Development For Overpayment of Unemployment Insurance Benefits, a Crossmatch Audit Worksheet, and a Wages Crossmatch form submitted by IWD, entered the record without objection.

ISSUES

Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits.

Whether IWD correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

Whether IWD correctly determined that the claimant was ineligible for unemployment insurance benefits due to failing to report to an appointment.

FINDINGS OF FACT

Joshua Basting made claims for and received unemployment benefits during the period from March 28, 2010, through June 12, 2010. When IWD pays unemployment insurance benefits to a claimant in the same period as reported wages occur, a computer automatically generates an audit. Cornerstone Construction Group of Bluegrass, Iowa, reported that Mr. Basting earned wages in the weeks ending April 3, through the week ending June 12, 2010. When making claims for those weeks, Mr. Basting reported having earned no wages. This resulted in an overpayment of benefits as follows:

Week Ending	Wages Reported Claimant/Employer	Benefits Paid/Entitled	Overpayment
April 3, 2010	\$ 0/941	402/0	402 +25
May 15, 2010	0/161	402/341	61
May 22, 2010	0/516	402/0	402 +25
May 29, 2010	0/635	402/0	402 +25
June 5, 2010	0/608	402/0	402 +25
June 12, 2010	0/742	402/0	<u>402 +25</u>
			2196.00

The amounts claimed by Mr. Basting resulted in his receipt of overpaid benefits of \$2,196 for the weeks in question. This includes \$25 in federal stimulus money added to the unemployment insurance benefit for each week in which the claimant was not entitled to receive any benefits. (Crossmatch audit; Lewis testimony).

IWD notified Mr. Basting of the overpayment by letter dated November 8, 2010. The letter included an agreement to repay the overpayment, and told Mr. Basting to respond by November 23, 2010, or his current benefits would be at risk. Mr. Basting did not respond. IWD issued the November 24, 2010, decision which is the subject of this appeal. This appeal followed. (Lewis testimony).

Investigator Lewis noted that the appellant had to make weekly calls or internet claims to receive benefits. The entry of this information required a PIN number. IWD warns every recipient to keep the PIN number private. On each of the weeks that he incorrectly reported no income, the appellant received a warning which stated,

“WARNING, Attempting to claim and receive unemployment insurance benefits by entering false information can result in loss of benefits, fines and imprisonment. To show you understand the warning, please enter one now.”

In order to successfully process his claims, the appellant would have had to signify that he understood the warning on each occasion. (Lewis testimony).

Mr. Basting testified that his ex girlfriend did his unemployment reporting for him because she understood how to use the internet. He did admit that he was not entitled to the overpayments he received, and he admitted that IWD’s calculation of the amount of overpayment was correct. Mr. Basting stated that he made a mistake and would not make that mistake again. He offered to repay to overpayment. (Basting testimony).

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 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 any future benefits payable to the overpaid claimant.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

A. Overpayment

¹ Iowa Code § 96.3(7)(a) (2009).

² 871 Iowa Administrative Code (IAC) 24.18.

IWD presented evidence from Mr. Basting's employer that he earned wages during the weeks in which he reported no wages. He did not contact the Department in response to the preliminary audit notice to explain the discrepancy. At the hearing Mr. Basting admitted to the receipt of the overpayment in the amount calculated by IWD.

B. Misrepresentation

Mr. Basting testified that he did not personally enter the incorrect information regarding his wages. However, he did testify that he received the payments, and he knew that he was not entitled to benefits for weeks that he actually worked. He must have shared his PIN number with his ex girlfriend in order for her to access his account online. For this reason he cannot escape responsibility for the information entered on his behalf. I find that credible evidence supports a finding of misrepresentation.

C. Failure to Report

Mr. Basting did not respond to the November 8, 2010, letter and preliminary audit notice. Those documents included the agreement to repay the overpayment and informed him that his response was due by November 23, 2010, or future benefits could be lost. The Iowa Administrative Code, at 871 IAC 24.2(1)(e) provides (in pertinent part):

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual **shall report as directed to do so** by an authorized representative of the department (emphasis added).

The notice in this case required the claimant to address the overpayment and misrepresentation decisions and to address the agreement to repay any overpayment. The claimant is therefore not eligible until these issues are addressed.

DECISION

Iowa Workforce Development's decision dated November 24, 2010, is AFFIRMED. The claimant was overpaid unemployment insurance benefits in the amount of \$2,196. The overpayment was due to misrepresentation by the claimant. The decision dated December 3, 2010, is also AFFIRMED. The claimant remains disqualified from benefits until he reports to the local IWD office.

rhw