

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

Appeal Number: 11IWDUI118
OC: 03/28/10
Claimant: Appellant (1, 2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MITCHELL E. HENDRYX
PO BOX 109
BLAIRSTOWN, IA 52209-0109

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)

August 25, 2011
(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Mitchell Hendryx filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated March 1, 2011, reference 01. In this decision, IWD determined that Mr. Hendryx was overpaid \$3,516 in unemployment insurance benefits for nine weeks between July 11, 2010 and January 15, 2011. The decision stated that the overpayment resulted from the claimant incorrectly reporting wages from Versatile Builders Inc.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on May 24, 2011 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on June 1, 2011. After a continuance, the appeal proceeded to hearing on August 24, 2011, by telephone, before Administrative Law Judge Robert H. Wheeler. The appellant appeared with counsel, Robert Oberbillig. Investigators Irma Lewis and Matt Mardesen of IWD appeared and testified. The hearing was consolidated with 11IWDUI 108, regarding Michael Van Wechel, at the appellants' request because the issues and witnesses are identical, and both claimants are represented by Mr. Oberbillig. Mr. Van Wechel and his wife, Amy Van Wechel, testified. Exhibits 1 through 11, 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.

FINDINGS OF FACT

Mitchell Hendryx filed claims for unemployment benefits for the weeks ending July 16, August 11, August 26, September 24, October 22, December 10 and December 30, of 2010. He also filed claims for unemployment benefits for the weeks ending January 6 and January 14 of 2011. (Exhibit 10; Lewis testimony).

IWD conducted an audit of Mr. Hendryx's unemployment claims for these weeks. Versatile Builders, Inc., reported that Mr. Hendryx earned wages in those weeks. When making claims for those weeks, Mr. Hendryx reported having earned no wages. The audit resulted in discovery of an overpayment of unemployment benefits in the amount of \$3,516. (Exhibits 10; Lewis testimony).

On March 1, 2011, IWD issued a decision to Mr. Hendryx notifying him that he was overpaid by \$3,516, as a result of misrepresentation. Mr. Hendryx timely appealed this decision.

Michael Van Wechel testified that he and Mr. Hendryx formed a corporation on April 14, 2010, to do construction. Versatile Builders, Inc. is a corporation owned by these two men, and both serve as officers of the corporation. (Exhibit 1; Van Wechel testimony). Mr. Hendryx submitted a letter (Exhibit 6) which stated that they considered their earnings from the corporation to be self employment income, and therefore, excluded from wage reporting for unemployment claims. The letter stated that they tried to do the right thing, relied on a handbook issued by IWD and sought advice from an IWD employee. They were advised that they could make claims for unemployment benefits without reporting their wages from the corporation because they were self employed. Amy Van Wechel also testified that the claimants acted in good faith. She was present

when the claimants received advice from IWD, and stated that they felt that they were in compliance with the law. (Exhibit 6; A. Van Wechel testimony).

IWD Investigator Matt Mardesen testified that the corporation, Versatile Builders, Inc., was a properly formed corporation registered with the Iowa Secretary of State. The corporation filed quarterly reports showing wages paid to their employees. (Exhibits 3, 3A, 4; Mardesen testimony). Because the corporation listed both Mr. Van Wechel and Mr. Hendryx as employees and paid wages to both during the weeks in question, Mr. Mardesen stated that they were not self employed, but rather were employees of a valid business entity. (Mardesen 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. Iowa Code § 96.3(7)(a). 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. 871 Iowa Administrative Code (IAC) 24.18.

A. Overpayment

No evidence disputed the amounts of benefits paid to Mr. Hendryx during the weeks in question. No evidence disputed the fact that he did not report any wages when making claims for unemployment benefits during the weeks in question. The claimant did not dispute the calculation of the amount of the overpayment.

B. Self Employment

Iowa law defines employment in Iowa Code section 96.19(18). It includes services performed for wages by any officer of a corporation if the officer is considered an employee of the corporation. The Report to Determine Liability (Exhibits 1, 2) filed by Versatile Builders, Inc. listed both Mr. Hendryx and Mr. Van Wechel as officers. The Employer’s Contribution and Payroll Reports filed by Versatile Builders, Inc., for all quarters in question (Exhibits 3, 4, 5) listed both Mr. Hendryx and Mr. Van Wechel as employees to whom the corporation paid wages. Mr. Mardesen correctly determined that Mr. Hendryx and Mr. Van Wechel were employees of Versatile Builders, Inc., a valid Iowa business entity. Therefore, they were not self employed.

B. Misrepresentation

The evidence did not establish that the overpayment in this case was the result of misrepresentation. All witnesses acknowledged that the claimants tried to make their claims for unemployment benefits in a legal manner. No evidence to the contrary entered the record. Both claimants sought advice from IWD, and both held a good faith belief that they were properly excluding the wages from Versatile Builders, Inc. when reporting wages for their claims.

DECISION

Iowa Workforce Development's decision dated March 1, 2011, is **AFFIRMED** as to the fact that the claimant was overpaid unemployment insurance benefits in the amount of \$3,516. This overpayment must be repaid. The decision is **REVERSED** as to any finding of misrepresentation by the claimant.

rhw