

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

**Appeal Numbers:** 12IWDUI497-499  
**OC:** 07/10/11  
**Claimant:** Appellant (4)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**LISA K. HUNZIKER**  
**328 SE PARKLAND CT.**  
**ANKENY, IA 50021-4402**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**IRMA LEWIS, INVESTIGATOR**

JOSEPH WALSH, IWD  
JONI BENSON, 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.

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(Administrative Law Judge)

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December 17, 2012

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(Dated and Mailed)

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**STATEMENT OF THE CASE**

Claimant/Appellant Lisa Hunziker appealed three decisions issued by Respondent Iowa Workforce Development ("IWD").

- In reference 03, dated September 19, 2012, IWD found Hunziker was ineligible to receive unemployment insurance benefits as of September 16, 2012 based on a failure to report to the local IWD office.
- In a second decision issued September 18, 2012, IWD found Hunziker was ineligible to receive unemployment benefits during the period from May 6, 2012 through September 8, 2012 because she failed to present an adequate record of her work searches at the time of an initial interview or after being requested to do so.

- Finally, in reference 5, dated September 27, 2012, IWD determined Hunziker received a \$4,864.93 overpayment, due to misrepresentation, for the 18 weeks between May 6, 2012 and September 8, 2012 because of the September 18th decision disqualifying her for an inadequate work search.<sup>1</sup>

On October 11, 2012, IWD transmitted the cases to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the administrative files to Hunziker.

A contested case hearing was held on December 13, 2012 pursuant to due notice. Lisa Hunziker failed to appear and the hearing was conducted in her absence. Irma Lewis appeared and testified on behalf of IWD as did Theresa Glick. Exhibits A1-A6, B1-B5 and C1-C6 were admitted into the record.

### **ISSUES**

Whether IWD correctly determined the Claimant is ineligible to receive unemployment insurance benefits.

Whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.

### **FINDINGS OF FACT**

Hunziker filed a claim for unemployment benefits with an effective date of July 10, 2011. She claimed and received regular benefits as well as benefits through an extension. Theresa Glick sent Hunziker a notice to report for a reemployment services assessment. The notice to report instructed Hunziker to bring certain information including copies of her documentation showing work searches. The purpose of the appointment was to determine whether Hunziker was complying with the unemployment insurance program requirements. (Glick testimony)

Hunziker did attend the appointment but only produced a piece of notebook paper with the names of different business written on it. The document did not contain any dates the companies were contacted, address or phone numbers or the name of the person Hunziker talked to. Glick gave Hunziker IWD forms for reporting her job search efforts for the past three months and asked her to return them. Hunziker's appeal letter states she did fill out the forms and mail them back to Glick on September 12, 2012, however Glick testified that they were not

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<sup>1</sup>The appeal filed by Ms. Hunziker was received by IWD on September 27, 2012—the date of issuance of the overpayment decision. It is therefore unlikely she meant for her appeal letter to include the overpayment decision or that she was even aware that decision had been issued. However, the overpayment decision was sent to Ms. Hunziker's address of record on September 27, 2012, the notice of hearing referred to the overpayment of benefits as an issue on appeal, and IWD Investigator Irma Lewis stated on the record that she supplied Ms. Hunziker with all documents supporting the overpayment claim prior to the hearing. Based on those facts, there was adequate notice to Ms. Hunziker that the legitimacy of the overpayment claim would be addressed during this hearing.

returned and that she was not aware of any difficulties the department was having with mail delivery. (Glick testimony; Appeal letter)

IWD assigned the matter to Investigator Irma Lewis for investigation.

On September 7, 2012 Lewis mailed Hunziker a notice to report by responding in writing regarding her work search records. The notice stated:

PROVIDE THE FOLLOWING: You either did not attend your RES/REA meeting, or You (sic) failed to provide sufficient work searches at the time of your meeting. The enclosed is a work search history notification. You must provide complete work searches for the weeks in question to include contact names, address, and phone numbers. Failure to provide these will result in a determination being made based on the facts in the record. This could result in an overpayment which you would be required to repay Iowa Workforce.

Attached to the notice was a form for reporting work search efforts. The form was mostly blank was filled in to request that Hunziker list the job contacts she made from May 6, 2012 through September 8, 2012. According to the notice, the information was due by September 17, 2012 at 3:30 pm.

Lewis did not receive a response from Hunziker. Thereafter, on September 18, 2012, IWD issued a decision finding Hunziker ineligible to receive benefits between the dates of May 6, 2012 and September 8, 2012 because:

YOU DID NOT PRESENT YOUR WORK SEARCHES AT THE TIME OF YOUR INITIAL INTERVIEW NOR AFTER BEING REQUESTED TO DO SO BY A NOTIFICATION. IOWA LAW REQUIRES THAT YOU LOOK FOR WORK AND THAT YOU PRODUCE THOSE RECORDS WHEN ASKED. YOU WERE SENT A NOTICE TO PROVIDE THOSE WORK SEARCHES AND YOU DID NOT COMPLY. YOU ARE DISQUALIFIED.

IWD indicated the disqualification for the 18-week period identified was based on Iowa Code section 96.4-3.

On the following day, September 19, 2012, IWD issued a second decision (Reference 03) holding that Hunziker was ineligible to receive benefits from September 16, 2012 forward. The decision stated:

OUR RECORDS INDICATE YOU WERE MAILED A NOTICE TO REPORT TO YOUR LOCAL WORKFORCE DEVELOPMENT CENTER. SINCE YOU DID NOT REPORT YOU DO NOT MEET THE AVAILABILITY REQUIREMENTS OF THE LAW. BENEFITS ARE DENIED AS OF 09/16/12.

The decision stated that the disqualification was made under 871 Iowa Administrative Code 24.2(1)(e).

Finally, Lewis calculated the amount of unemployment benefits Hunziker was paid during the 18-week period of disqualification beginning in May 2012 and, on September 27, 2012, IWD issued a decision (Reference 05), finding Hunziker was overpaid benefits in the amount of \$4,864.93 "BECAUSE OF THE DECISION DATED 09/18/12, WHICH DISQUALIFIED YOU FOR AN INADEQUATE WORK SEARCH." The legal basis for the overpayment was identified as Iowa Code section 96.16-4.

Hunziker filed this appeal. In her appeal letter, Hunziker claimed she sent her completed job search records in to Glick on September 12, 2012 in an envelope provided to her by Glick. Hunziker did not appear for the hearing to testify.

## **REASONING AND CONCLUSIONS OF LAW**

### **I. Eligibility for Benefits**

#### **A. Period from May 6, 2012 through September 8, 2012:**

To be eligible to receive unemployment benefits, an unemployed individual must be able and available for work, and earnestly and actively seeking work.<sup>2</sup> The unemployed individual bears the burden of proving the individual is able and available for work, and earnestly and actively seeking work.<sup>3</sup>

Merely registering with IWD does not establish an individual is earnestly and actively seeking work.<sup>4</sup> It is essential the person diligently look for work.<sup>5</sup> An individual is ineligible for benefits for any period for which IWD finds the individual has failed to make an earnest and active search for work.<sup>6</sup> The circumstances in each case are considered in determining whether an earnest and active search for work has been made.<sup>7</sup>

Hunziker claims in her appeal letter that she met with Glick on September 10th and sent her completed job search forms to Glick on September 12, 2012. However, she did not appear to testify. Without her participation in the hearing it is difficult to make a judgment about her credibility on this issue.

However, Glick testified she met with Hunziker, found her records to be insufficient, and requested that she fill out the job search forms and return them. When she did not receive

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<sup>2</sup> Iowa Code § 96.4(3) (2011).

<sup>3</sup> 441 IAC 24.22.

<sup>4</sup> *Id.* 24.22(3).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 441 Iowa Administrative Code (IAC) 24.22(3).

them, she referred the matter to Lewis for an investigation. Lewis' notice requesting the forms was mailed on September 7, 2012 and requested a response by September 17, 2012.

Clearly, Hunziker did not meet with Glick on September 10th—her case had already been referred for investigation on September 7th when Lewis sent out the notice. Under these circumstances, I find Hunziker's version of events to be less likely.

Hunziker has failed to carry her burden of proof to show she was available for work, and earnestly and actively seeking work during the period from May 6, 2012 through September 8, 2012. IWD's decision that she was ineligible for benefits during that period should be affirmed.

#### **B. Period beginning September 16:**

IWD's regulations provide that in order to maintain continuing eligibility for benefits, a claimant shall report as directed by an authorized representative of the Department.<sup>8</sup> That rule also states that the method of reporting will be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department.<sup>9</sup> The purpose of this rule is clearly to ensure that the able, available and actively seeking work criteria are met.

Here, Hunziker was asked by an authorized representative of IWD, Investigator Lewis, to report by sending in copies of completed job search forms. The purpose of the job search forms is to allow the agency to verify the benefits recipient is able, available and actively seeking work. As indicated above, I find Hunziker did not respond to the request to report. Therefore, IWD's decision disqualifying Hunziker from receiving benefits from September 16, 2012 forward should be affirmed.

#### **II. Overpayment of Benefits:**

The amount of the overpayment was not disputed. However, the decision issued by IWD refers to Iowa Code section 96.16-4 as the legal basis for the overpayment. That statute involves the recoupment of benefits that are overpaid due to misrepresentation on the part of the benefits recipient.

IWD did not certify the issue of whether the overpayment in this case was due to misrepresentation as an issue for appeal. Instead, IWD certified the overpayment issue under Iowa Code section 96.3-7 which states in relevant part:

If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum

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<sup>8</sup> 871 Iowa Administrative Code (IAC) 24.2(1)(e).

<sup>9</sup> *Id.*

equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Further, IWD did not present evidence of misrepresentation at hearing. Under these circumstances, while the amount of the overpayment should be affirmed, the decision that the overpayment was due to misrepresentation on Hunziker's part should be reversed.

### **ORDER**

IWD's decision issued September 18, 2012, which disqualifies Lisa K. Hunziker from receiving unemployment benefits between May 6, 2012 and September 8, 2012 is AFFIRMED.

IWD's decision (Reference 03) issued September 19, 2012, which disqualifies Lisa K. Hunziker from receiving unemployment benefits beginning September 16, 2012 is AFFIRMED.

IWD's decision (Reference 05) issued September 27, 2012 is AFFIRMED AS MODIFIED. Insofar as it establishes a claim against Hunziker in the amount of \$4864.93, the decision is affirmed. However, the overpayment is not due to misrepresentation on Hunziker's part and the decision is modified in that regard.

IWD shall take any actions necessary to implement this decision.

kka