

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

Appeal Number: 13-IWDUI-047
OC: 12/04/11
Claimant: Appellant (1)

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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

CHRISTOPHER KELLY
1133 DIXON DRIVE, APT. 7
WATERLOO, IA 50701

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
IRMA LEWIS, INVESTIGATOR

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.

JONI BENSON, IWD

(Administrative Law Judge)

March 21, 2013

(Decision Dated & Mailed)

Section 96.16-4 - Misrepresentation
Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE

Claimant Christopher Kelly filed an appeal from an Iowa Workforce Development decision dated January 7, 2013, reference 09, which held that he had been overpaid unemployment benefits in the amount of \$4,474, because he failed to report or incorrectly reported wages earned with Packers Sanitation Services during the period from April 1, 2012 through July 7, 2012. The decision further held that the overpayment was due to misrepresentation on Mr. Kelly's part.

A hearing was scheduled by way of telephone conference call on March 21, 2013. Notice of the hearing was sent to all parties at their addresses of record. None of the notices mailed by this office was returned as undeliverable.

At the time scheduled for hearing, Investigator Irma Lewis appeared and testified for Iowa Workforce Development, Investigation and Recovery. Appellant Christopher Kelly failed to appear. Ms. Lewis elected to proceed with the hearing in Mr. Kelly's absence.

The record consists of the documents contained in the administrative record numbered 1-4, IWD's Exhibit A, pp. 1-5, and the testimony of Irma Lewis.

FINDINGS OF FACT

Christopher Kelly filed a claim for unemployment benefits with an effective date of December 4, 2011. Mr. Kelly made claim for and received unemployment benefits during the second quarter of 2012. During that same quarter, Packers Sanitation Services reported having paid wages to Kelly. Accordingly, Iowa Workforce Development audited Kelly's claim for that period.

Weeks Beginning	Wages
April 1, 2012 – April 29, 2012	\$400/week
May 6, 2012	320
May 13, 2012	400
May 20, 2012	430
May 27, 2012	290
June 3, 2012	480
June 10, 2012 – June 17, 2012	400/week
June 24, 2012	655
July 1, 2012	542.50

For those same weeks, Mr. Kelly reported to Workforce Development that he did not work and did not earn any wages during the weeks beginning April 1, 2012 through May 13, 2012, the weeks beginning May 27, 2012 through June 10, 2012, and for the week beginning June 24, 2012. For the week beginning May 20, 2012 he reported earning only \$150 and for the weeks beginning June 17, 2012 and July 1, 2012 only \$100.

Based on the wages reported by Packers Sanitation., IWD calculated the amount of unemployment wages Kelly should have received and compared that to the amount of benefits actually paid as follows:

Weeks beginning	Paid	Entitled To	Overpayment
April 1, 2012 – May 13, 2012	\$344/week	0	\$344/week
May 20, 2012	280	0	280
May 27, 2012	344	\$140	204

June 3, 2012 – June 10, 2012	\$344/week	0	\$344/week
June 17, 2012	330	0	330
June 24, 2012	344	0	344
July 1, 2012	330	0	330

Total \$4,474.00

IWD Investigator Irma Lewis mailed a notice to Kelly on December 27, 2012 notifying him of the audit and the potential overpayment of \$4,474 and offering him an opportunity to provide proof of his earnings by January 3, 2013. Mr. Kelly failed to respond. On January 7, 2013, Iowa Workforce Development issued the decision at issue, holding that Kelly was overpaid benefits in the amount of \$4,474 and that the overpayment was due to misrepresentation on Kelly's part.

Mr. Kelly filed this appeal. In his appeal letter he stated that he did not disagree with having to repay the benefits. Kelly argued, however, that he should be granted a payment plan rather than having the Department apply his current benefits against the overpayment.

CONCLUSIONS OF LAW

The issue is whether Christopher Kelly has been overpaid benefits in the amount of \$4,474 and, if so, whether the overpayment was the result of misrepresentation on Kelly's part.

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 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 in this case demonstrates Christopher Kelly did receive an overpayment of unemployment benefits. Mr. Kelly admitted to the overpayment in his appeal letter. He did not contest the amount of the overpayment.

That leaves the question whether the overpayment is due to misrepresentation on the part of Christopher Kelly.

The evidence shows Mr. Kelly consistently failed to report any earnings whatsoever for a majority of the weeks in question. During the weeks he did report earnings, he underreported by substantial amounts. Mr. Kelly would have been notified of his responsibility to accurately report his wages each week at the time he made his claim for benefits. Further, Kelly failed to respond to the notice sent to him advising of the potential overpayment.

¹ Iowa Code section 96.3(7).

² Iowa Code section 96.16(4).

The definition of misrepresentation includes the withholding of a material fact.³ Here, the evidence is very clear that after Kelly failed to accurately report his earnings week after week. I find that the evidence supports the department's decision the overpayment was due to misrepresentation on Mr. Kelly's part.

DECISION

The decision of the representative dated January 7, 2013, reference 09 is AFFIRMED. The claimant has been overpaid benefits in the amount of \$4,474 due to misrepresentation.

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³ Iowa Code section 96.16(4).