

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

KENNETH MCCOLLOUGH
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IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
JANE CONNOR
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DES MOINES, IA 50309

JOE WALSH, IWD

Appeal Number: 12IWDUI045

OC: 1/2/11

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 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)

March 27, 2012

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Kenneth McCollough filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated November 18, 2011, reference 01. In this decision, the Department determined that McCollough was overpaid \$1,600 in unemployment insurance benefits for six weeks between March 27 and June 25, 2011. The decision states that the overpayment resulted from the claimant failing to report wages earned with Con-Struct Inc.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on January 13, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on January 18, 2012. On February 28, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Jane Conner represented the Department and

presented testimony. Appellant Kenneth McCollough appeared and presented testimony. Exhibits A through G were submitted by the Department and admitted into the record as evidence.

ISSUES

1. Whether the Department correctly determined that the Appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.
2. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

FINDINGS OF FACT

Kenneth McCollough filed a claim for unemployment benefits with an effective date of January 2, 2011. McCollough made claims for and received unemployment benefits during the second quarter of 2011.

The Department conducted a routine audit of McCollough's unemployment claim for the second quarter of 2011. Con-Struct Inc. reported that McCollough earned wages in the weeks ending April 2 through June 25, 2011. When making claims for all of those weeks except for the week ending May 21, 2011, McCollough reported that he did not work and did not earn wages. Although McCollough reported having earned wages in the week ending May 21, 2011, the amount of wages McCollough reported differed from the amount reported by Con-Struct Inc. McCollough's weekly benefit amount during this time period was \$370. (Conner testimony; Exh. D).

The following chart sets out the amounts claimed by McCollough and reported by Con-Struct Inc. during the weeks in question, as well as the amount of benefits McCollough received each week and the amount of benefits the Department believes McCollough should have received if his wages had been correctly reported.

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employer</i>	<i>Benefits rec'd</i>	<i>Benefits entitled</i>
4/2	\$0	\$433	\$370	\$0
4/23	\$0	\$33	\$370	\$370
4/30	\$0	\$570	\$370	\$0
5/14	\$0	\$337	\$370	\$125
5/21	\$592	\$742	\$0	\$0
5/28	\$0	\$311	\$370	\$151
6/18	\$0	\$118	\$370	\$344
6/25	\$0	\$495	\$370	\$0

(Exh. D).

Based on the foregoing, the Department determined that McCollough was overpaid

unemployment benefits in the amount of \$1,600. (Exh. 3, 6).

After determining the discrepancy between the amounts reported by McCollough and his employer, the Department sent McCollough a preliminary audit notice on October 31, 2011. That notice advised him of the discrepancy and gave him an opportunity to respond by November 10, 2011. McCollough contacted investigator Jane Conner by telephone on November 7 and asked for some additional time to review the information. Conner gave McCollough an extension to November 14, 2011. Con-Struct Inc. faxed Conner information regarding McCollough's gross wages on November 7. Conner compared the information that Con-Struct Inc. provided in the November 7 fax with the previous wage information that the employer had provided; the information was identical. McCollough made no further contact with Conner to discuss the overpayment issue. (Exh. F; Conner testimony).

On November 18, 2011, the Department issued a decision to McCollough notifying him that he was overpaid by \$1,600 as a result of misrepresentation.¹ (Exh. B).

McCollough has filed unemployment insurance claims at various times over the past nine years. He incurred a slight overpayment in 2006 when he slightly underreported his wages for two weeks. (Conner testimony).

McCollough testified at hearing that he reported wages during each of the weeks that he worked during the time period in question. He could not explain why the Department had no record of wages reported for the majority of the weeks; he indicated his belief that perhaps he hung up the phone too early for the system to record his wages when he made his claims by phone. McCollough testified that his benefits are direct deposited into his account and he does not pay a great deal of attention to what is deposited, but rather to what is going out. (McCollough testimony).

Conner testified that the Department's claims system does not pay benefits out for a particular week unless all of the information requested during the automated claims process is provided. If a claimant hung up before all information was provided and recorded, benefits would not be paid for that particular week. (Conner 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, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department 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.² If a claimant is overpaid benefits as a result of

¹ While the Department's decision does not specifically state that the overpayment was the result of misrepresentation, the decision states that it was made under section 96.16(4) of the Iowa Code. That section relates to overpayments made as a result of misrepresentation and the consequences the Department may impose.

² Iowa Code § 96.3(7)(a) (2011).

misrepresentation, the Department 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.³

A. Overpayment

In his appeal of the Department’s decision, McCollough wrote, “I understand that there’s an overpayment and I wish to set up a repayment plan.” At hearing, McCollough acknowledged that he did not dispute the Department’s determination that he was overpaid, nor did he dispute the amount of the overpayment the Department calculated. Additionally, the evidence presented in the record supports the Department’s overpayment finding. Consequently, the Department’s determination that McCollough was overpaid in the amount of \$1,600 is affirmed.

B. Misrepresentation

A finding of misrepresentation is supported when an individual receives benefits while not eligible “by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact.”⁴

McCollough has asserted here that a malfunction in the Department’s claims reporting system must have caused his reported wages not to register. Under the circumstances, I do not find McCollough’s testimony regarding reporting wages credible. The evidence demonstrates – and McCollough acknowledges – that he has filed for unemployment insurance benefits a number of times and is therefore familiar with the rules and procedures. The wages that McCollough earned during four of the weeks in question were high enough that he was entitled to no benefits for those weeks. During three of those weeks, however, he received his full weekly benefit amount of \$370. When asked about how he failed to realize that he was being paid benefits when he was also working, McCollough testified that he was more concerned about what was going out of his account than what was coming in.

Additionally, Conner’s credible testimony regarding how the Department’s claims reporting system works indicates that the claimant must respond to all of the relevant inquiries or benefits will not be paid in a particular week. I find that McCollough failed to report or accurately report wages during the time period in question and that McCollough received benefits on the basis of those reports. Under these circumstances, a finding of misrepresentation is warranted.

³ 871 Iowa Administrative Code (IAC) 24.18.

⁴ Iowa Code § 96.16(4) (2011).

DECISION

Iowa Workforce Development's decision dated November 18, 2011, reference 01, is **AFFIRMED**. The claimant has been overpaid benefits in the amount of \$1,600 due to misrepresentation.

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