

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

Appeal Numbers: 11IWDUI228-229
OC: 03/20/11
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

DAVID WEBSTER
1688 EDEN CT
CLEARWATER, FL 33756

STATE CLEARLY

QUALITY CONTROL, IWD
1000 E GRAND AVE
DES MOINES, IA 50319-0209

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.

JOE WALSH, IWD

(Administrative Law Judge)

September 29, 2011

(Decision Dated & Mailed)

Iowa Code section 96.3-4 – Number of Dependents
Iowa Code section 96.3-7 – Recovery of Overpayment Benefits

STATEMENT OF THE CASE

Claimant/Appellant David Webster appealed two decisions issued by Iowa Workforce Development (“IWD”) dated July 11, 2011, reference 02, and July 13, 2011, reference 03. In reference 02, IWD found Webster was not eligible to claim his three children as dependents on his claim effective March 20, 2011. In reference 03, IWD found Webster was overpaid \$500 in unemployment benefits between March 20, 2011 and May 28, 2011 due to a reduction in his weekly benefit amount after his number of dependents was corrected.

IWD transmitted the administrative files to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the administrative files, it mailed copies of the administrative files to Webster.

A contested case hearing was held before Administrative Law Judge Heather L. Palmer on September 28, 2011. Judy Gilkison appeared and testified on behalf of IWD. Webster did not appear as directed by the Notice of Telephone Hearing. Exhibits 1 through 13 were admitted into the record.

ISSUES

Whether IWD correctly determined that the Claimant was not eligible to claim his children as dependents on his unemployment insurance claim.

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

FINDINGS OF FACT

Webster claimed his three children as dependents when he sought unemployment insurance benefits. Gilkison conducted a review of Webster's file. During the review, Gilkison inquired about Webster's dependents. Webster reported he was divorced and that under the divorce decree he had the right to claim his three children as dependents on his income tax return. Webster informed Gilkison that in 2009 he allowed his ex-wife to claim the children. Webster received an extension to file his 2010 and reported he intended to claim all three children on his 2010 income tax return. Gilkison asked Webster to send her a copy of his divorce decree.

Gilkison did not receive a copy of Webster's divorce decree. She determined that Webster should not have been allowed to claim three dependents for purposes of determining his weekly benefit amount for weeks ending March 26, 2011 through May 28, 2011. Gilkison found Webster had been paid \$426 per week in unemployment insurance benefits and that he was entitled to \$376 per week in unemployment insurance benefits with the removal of the children as dependents. Gilkison determined Webster was overpaid \$50 per week, or a total of \$500. Webster appealed.

Webster produced a copy of his divorce decree with his appeal. The divorce decree awarded Webster the right to claim his oldest child as a dependent so long as he was current on his child support obligation, and awarded his ex-wife the right to claim the two youngest children as dependents.

Gilkison reviewed the divorce decree and found Webster was entitled to claim his oldest child as a dependent. Gilkison determined that for each of the weeks ending March 26, 2011 through May 28, 2011, Webster received \$426 in unemployment insurance benefits, and he was entitled to \$390 in weekly unemployment insurance benefits. Thus, Gilkison found Webster received an overpayment of \$36 per week, or \$360.

REASONING AND CONCLUSIONS OF LAW

I. Number of Dependents

An eligible individual's weekly benefit amount for a week of total unemployment is paid in an amount equal to the fraction of the individual's total wages in insured work, which varies based on the number of dependents.¹ The term "dependent" in Iowa Code section 96.3(4) is as defined in Iowa Code section 422.12(1)a "as if the individual claimant was a taxpayer."²

The divorce decree awarded Webster the right to claim his oldest child as a dependent so long as he was current on his child support obligation, and awarded his ex-wife the right to claim the two youngest children as dependents. Gilkison correctly found one of Webster's children should be included as a dependent for purposes of determining his weekly benefit amount.

II. Overpayment

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.³ IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.⁴

For the weeks ending March 26, 2011 through May 28, 2011, Webster received unemployment insurance benefits of \$426 per week based on three dependents. Webster was entitled to claim one of his three children as a dependent. IWD correctly found Webster was entitled to \$390 per week in unemployment insurance benefits, and that he received an overpayment of \$36 per week, or a total of \$360 for the weeks ending March 26, 2011 through May 28, 2011

DECISION

IWD's decision, reference 02, is MODIFIED. Gilkison agreed at hearing Webster is entitled to claim his oldest child as a dependent. IWD's decision, reference 03, finding Webster was overpaid \$500 in unemployment insurance benefits for the weeks ending March 26, 2011 through May 28, 2011 is MODIFIED. Gilkison agreed at hearing Webster was overpaid \$36 each week, for a total of \$360.

hlp

¹ Iowa Code § 96.4 (2011).

² *Id.*

³ *Id.* § 96.3(7).

⁴ *Id.*