

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

**Appeal Number: 04-IWDUI-224**  
**OC: 02/28/04**  
**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, 4<sup>th</sup> Floor Lucas Building, Des Moines, Iowa 50319.**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

**DANA E LEWIS**  
**410 REYNOLDS STREET**  
**FAIRFAX IA 52228**

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.

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATION AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

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.

DAN ANDERSON, IWD

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(Administrative Law Judge)

**December 23, 2004**

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated November 22, 2004, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$1,126.00, because of misrepresentation in failing to correctly report wages earned for 12-weeks during a period from December 28, 2003 to May 29, 2004.

After due notice was issued, a hearing was held by telephone conference call on December 20, 2004. The claimant did not participate. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Neil Anderson.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of February 29, 2004.

A wage cross-match audit was done on the claimant's claim for the first and second quarters of 2004. Representatives of Gregg Dee Gongwer Tree Service submitted audit reports to the department regarding the weekly wages earned by the claimant for the review period from December 28, 2003 to May 29, 2004. The department compared the employer's reports against the claimant's unemployment claims for the same weeks.

After the initial review, Investigator Anderson mailed an audit notice to the claimant dated October 6, 2004 regarding a \$693 overpayment. The claimant responded by challenging the amount of the overpayment that caused Anderson to conduct a further review. Anderson obtained a payroll ledger from the employer that showed the gross weekly wages earned by the claimant during the review period and he compared it to the initial audit. The department expanded the audit period to include the second quarter of 2004. The only week that Investigator Anderson found any discrepancy was the week ending April 24, 2004, which showed the corrected amount of the gross wage to be \$80, not \$72 that had been earlier reported by the employer.

The final audit showed that the claimant had substantial overpayments ranging from a low of \$85 to a high of \$265 for seven-weeks of the review period, and modest overpayments ranging from a low of \$1 to a high of \$38 for five additional weeks. Anderson calculated the total overpayment for the twelve weeks to be \$1,126.00, and he mailed a second audit notice to the claimant on November 3, 2004. Anderson received responses from the claimant that he reviewed, but he found no merit to the claimant's contention that the overpayment was incorrect.

Anderson concluded the claimant misrepresented his claim(s) by substantially under-reporting his earnings in order to receive a greater unemployment benefit.

The claimant failed to respond to the hearing notice.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$1,126.00, and if so whether it is the result of misrepresentation.

#### **Iowa Code Section 96.16-4 provides:**

4. Misrepresentation. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received

by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

**Iowa Code Section 96.3-7 provides:**

7. Recovery of overpayment of benefits. 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 division of job service in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the division a sum equal to the overpayment.

If the division determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant is overpaid benefits \$1,126.00 for the 12-weeks ending May 29, 2004 pursuant to Iowa Code section 96.16-4. The department verified the employer's audit reports by obtaining their payroll ledger when the claimant challenged the overpayment determination. The claimant substantially under-reporting his wages for seven of the twelve weeks he incurred an overpayment that establishes misrepresentation.

**DECISION:**

The decision of the representative dated November 22, 2004, reference 02, is AFFIRMED. The claimant is overpaid benefits \$1,126 due to misrepresentation.

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