

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

**Appeal Number:** 05-IWDUI-006  
**OC:** 12/14/03  
**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.***

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

**DEAN L BUSH**  
**752 PERU ROAD**  
**DUBUQUE IA 52001**

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

DAN ANDERSON, IWD

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)

January 28, 2005

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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 December 30, 2004, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$371.83.00, because of misrepresentation in failing to report wages earned with W C Stewart Construction for the 2-weeks ending May 15, 2004.

After due notice was issued, a hearing was held by telephone conference call on January 25, 2005. The claimant did not participate. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Tom Carnahan. Official Notice was taken of the administrative file.

#### 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 December 14, 2003.

A wage cross-match audit was done on the claimant's claim for the second quarter of 2004. A representative of W C Stewart Construction reported to the department the hours worked and the wages earned by the claimant during the audit review period. The department compared the employer's wage report against the claimant's claims for benefits for the same weeks.

The employer reported paying gross wages of \$940 to the claimant for the week ending May 8, 2004, and \$448 for the week ending May 15, 2004. The claimant reported no wages for either week, and he received benefits of \$280 and \$91.83. The department determined he was not eligible for the benefits totaling \$371.83 due to earning excessive wages.

Investigator Carnahan mailed a notice to the claimant on December 7, 2004 regarding the audit review and \$371.83 overpayment. The claimant did not respond.

Carnahan concluded the claimant misrepresented his claims by answering no to the question whether he worked during the weeks ending May 8, and May 15, 2004.

The claimant failed to respond to the hearing notice.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$371.83, 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 \$371.83 for the 2-weeks ending May 15, 2004 pursuant to Iowa Code section 96.16-4. The claimant misrepresented his claim by failing to report his work and wages for the 2-weeks at issue. Although the claimant filed an appeal, he failed to participate and offer any evidence to refute his employer's wage report and the department determination that he intentionally failed to report his wages.

DECISION:

The decision of the representative dated December 30, 2004, reference 02, is AFFIRMED. The claimant is overpaid benefits \$371.83 due to misrepresentation.

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