

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ROBERT A. LARGE III
819 E. MAIN STREET
FREMONT, IA 52561

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

Dan Anderson, IWD

Appeal Numbers: 09-IWDUI-239
09-IWDUI-240
09-IWDUI-241
09-IWDUI-242
09-IWDUI-243
OC: 12/21/08
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.

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)

December 29, 2009

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22 – Benefit Eligibility Conditions
Section 96.3-7 – Recovery of Overpayments
Section 96.16-4 - Misrepresentation

STATEMENT OF THE CASE

Claimant Robert Large, III filed appeals from five Iowa Workforce Development Department decisions. The decisions are as follows:

1. Decision issued November 19, 2009, reference 03, holding Large was not eligible to receive unemployment benefits from May 24, 2009 through July 17, 2009 because he was incarcerated during the majority of that time and was therefore not available for work as required by statute;
2. Decision issued November 19, 2009, reference 04, holding Large is not eligible to receive unemployment benefits because he is incarcerated and is therefore not available for work as required by statute. This decision denies benefits as of August 9, 2009.
3. Decision issued November 23, 2009, reference 05, holding Large was overpaid unemployment benefits in the amount of \$292.17 for the two weeks between May 24, 2009 and June 6, 2009 based on the decision he was not available for work at that time.
4. Decision issued November 23, 2009, reference 06, holding Large was overpaid unemployment benefits in the amount of \$1398 for the six weeks between June 13, 2009 and July 18, 2009 based on the decision he was not available for work at that time.
5. Decision issued November 23, 2009, reference 07, holding Large was overpaid unemployment benefits in the amount of \$3262 for the fourteen weeks between August 9, 2009 and November 14, 2009 based on the decision he was not available for work at that time.

Hearing was scheduled for December 24, 2009. Notice of said hearing was sent to Large at the address he supplied Iowa Workforce Development. At the time of hearing Investigator Karen von Behren appeared and participated. She submitted exhibits marked 1-22, all of which were admitted into the record. Large did not appear. The hearing was held in his absence.

FINDINGS OF FACT

Robert A. Large, III filed a claim for unemployment insurance benefits effective December 21, 2008. He made claim for and received benefits during the second, third and fourth quarters of 2009.

Iowa Workforce Development Investigator Karen von Behren received information from the Social Security Administration that Large had been in jail from May 24, 2009 through

July 17, 2009. (Exh. 4). Additionally, the SSA reported that Large was again incarcerated on August 13, 2009 and had yet to be released. (Exh. 9). von Behren then telephoned the Davis County Law Center and spoke with Josh O'Dell, Chief Deputy. Deputy O'Dell confirmed the dates of incarceration and stated that Large remained in jail as of that date and would not be released for some time. (Exh. 5).

Based on the information received, von Behren sent Large a *Notice of Unemployment Insurance Fact-Finding Interview*. She informed him she would telephone him at the Law Center on November 17, 2009 at 10:30 a.m. to discuss whether Large was and had been able and available to work and whether he had received an overpayment of unemployment benefits. (Exh. 2).

On the scheduled date von Behren telephoned Deputy O'Dell at the Davis County Law Center. Deputy O'Dell located Large and asked whether he wanted to participate in the interview. Large responded that he had already sent a statement to von Behren and he declined to participate further. Deputy O'Dell then checked the jail's outgoing mail and determined that no letters had been sent by Large to von Behren. He informed von Behren of Large's refusal to participate and the fact no letter had been sent to her. (Exh. 22).

Based on the information available to her, von Behren determined that Large was ineligible for unemployment benefits during his periods of incarceration. She therefore caused decisions to be issued on November 19, 2009 holding Large was not eligible to receive benefits from May 24, 2009 through July 17, 2009 and from August 9, 2009 on. (Exh. 1,6).

Once von Behren determined Large was not eligible to receive benefits during the periods in question, she then added up the benefits he received during that time and caused three more decisions to be issued on November 23, 2009. Those decisions held Large was overpaid benefits in the amounts of \$292.17 for the weeks between May 24, 2009 and June 6, 2009; \$1,398 for the weeks between June 13, 2009 and July 18, 2009; and \$3,262 for the weeks between August 9, 2009 and November 14, 2009. (Exh. 11 – 16).

von Behren also noted that the department specifically informs claimants in a pamphlet they must report any condition that would prevent them from working, including incarceration. (Exh. 21). Despite that fact Large reported weekly he was able and available to work. (Exh. 18). Therefore, von Behren determined Large misrepresented his status in order to receive benefits to which he was not entitled.

CONCLUSIONS OF LAW:

The issues are whether Robert A. Large, III was available for work on the dates in question, whether he received an overpayment of benefits and whether any overpayment was due to misrepresentation on his part.

I. Available for work.

Iowa law requires that an individual is eligible to receive unemployment benefits only if he or she is able and available to work.¹ The department has adopted rules which define “able” as requiring the physical and mental ability to work in some gainful employment which need not be the individual’s regular employment.² The availability requirement is met when an individual is “willing, able, and ready to accept suitable work.”³ The rules specifically provide that a claimant who is in jail or prison is not available for work.⁴

The evidence in this case is undisputed that Large was in jail from May 24, 2009 until July 17, 2009. He returned to jail on August 13, 2009 and remains there. Large was clearly not available during these times and therefore, the department’s decisions, reference 03 and 04 must be affirmed.

II. Overpayment

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.⁵

Based on the fact Large was ineligible for benefits during the weeks from May 24, 2009 and July 17, 2009 and from August 9, 2009 on, any funds he received during those times were paid in error. As shown by the evidence, Large received \$292.17 in benefits and stimulus payments for the weeks between May 24 and June 6, 2009. (Exh. 12). He received \$1,398 in benefits and stimulus payments for the six weeks between June 13, 2009 and July 18, 2000. (Exh. 14). He received \$3,262 in benefits and stimulus payments for the weeks between August 15, 2009 and November 14, 2009. (Exh. 16). The department’s decisions that Large received overpayments in these amounts must be affirmed.

1 Iowa Code section 96.4(3).

2 871 IAC 24.22(1).

3 871 IAC 24.22(2).

4 871 IAC 24.23(12).

5 Iowa Code section 96.3(7).

III. Misrepresentation

If any benefits are erroneously 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.⁶

The pamphlet provided to unemployment benefits claimants specifically notifies them that they are not eligible for benefits if they are incarcerated. (Exh. 21, pp. 1, 7). Additionally, the pamphlet informs claimants that they must be actively seeking work by in-person contact with employers in order to receive benefits. (Exh. 21, 1). Large knew or should have known he was not entitled to benefits while he was jailed. He was not available to work and he could not have been actively seeking employment through face-to-face contact with employers.

Further, in order to collect benefits a claimant must certify each week he or she is eligible by calling in to a telephone number or filling out an on-line form. Both systems require use of a four-digit personal identification number which protects the claimant from another person filing his or her claim. (Exh. 21, p. 8).

Here, someone certified each week that Large was available to work. Since Large was incarcerated, it would have been difficult for him to have computer or telephone access to complete his weekly report. However, if someone other than Large completed the report each week that person must have been provided Large's personal identification number. Based on these factors, the preponderance of the evidence shows that Large or someone at his behest supplied false information each week in order that Large would receive benefits to which he was not entitled. The department's decisions that the overpayments in this case were due to misrepresentation on Large's part must therefore be affirmed.

DECISION:

The following decisions of Iowa Workforce Development are AFFIRMED:

1. Decision issued November 19, 2009, reference 03. Robert A. Large, III was not eligible to receive unemployment benefits from May 24, 2009 through July 17, 2009 because he not available for work as required by statute;
2. Decision issued November 19, 2009, reference 04. Robert A. Large, III is not eligible to receive unemployment benefits as of August 9, 2009 because he is not available to work;
3. Decision issued November 23, 2009, reference 05. Robert A. Large, III was

⁶ Iowa Code section 96.16(4).

overpaid unemployment benefits in the amount of \$292.17 for the two weeks between May 24, 2009 and June 6, 2009 due to misrepresentation;

4. Decision issued November 23, 2009, reference 06. Robert A. Large, III was overpaid unemployment benefits in the amount of \$1398 for the six weeks between June 13, 2009 and July 18, 2009 due to misrepresentation;
5. Decision issued November 23, 2009, reference 07. Robert A. Large, III was overpaid unemployment benefits in the amount of \$3262 for the fourteen weeks between August 9, 2009 and November 14, 2009 due to misrepresentation.

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