

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

Appeal Number: 10-IWDUI-195
OC: 06/15/08
Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

KRISTOPHER J. CHURCH
P.O. BOX 4
LYNDON, IL 61261-0004

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
150 DES MOINES ST.
DES MOINES IA 50319

DAN ANDERSON, IWD

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)

July 29, 2010

(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Kristopher J. Church filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated June 8, 2010, reference 01. In this decision, the Department determined that Church was overpaid \$4572 in unemployment insurance benefits for twelve weeks between April 19, 2009 and July 11, 2009. The decision stated that the overpayment resulted from the claimant failing to report wages earned with Cady, Inc.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 2, 2010 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on July 6, 2010. On July 26, 2010 a telephone appeal hearing was held before Administrative Law Judge Kerry Anderson. Appellant Kristopher Church appeared and participated on his own behalf. Investigator Jane Connor represented the Department and presented testimony. Exhibit A, pp. 1-6, was submitted by the Department and admitted into evidence.

ISSUES

Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits.

Whether IWD correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

FINDINGS OF FACT

Claims were made for and unemployment benefits were deposited into Kristopher Church's account during the second and third quarters of 2009. IWD conducted a routine audit of Church's unemployment claim and, in doing so, collected wage information from his employer, Cady, Inc., for the periods in question. IWD then compared the earnings reported by Cady, Inc. to those reported each week when Church's claim for benefits was submitted.¹

The following chart sets out the earnings claimed each week and those reported by Cady, Inc. as well as the amount of benefits Church received each week and the amount of benefits the Department believes Church should have received if his wages were 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>
04/25/09	\$ 0	\$417	\$426	\$ 115
05/02/09	0	416	426	116
05/09/09	0	597	426	---
05/16/09	0	597	426	---
05/23/09	0	588	426	---
05/30/09	0	588	426	---
06/06/09	0	278	426	254
06/13/09	0	277	426	255
06/20/09	0	542	426	---
06/27/09	0	542	426	---
07/04/09	0	566	426	---
07/11/09	0	566	426	---

¹ Cady, Inc. reported wages earned on a bi-weekly basis. The Department divided each biweekly amount reported by two to arrive at an amount of wages earned each week.

Additionally, Church received \$25 in federal economic stimulus benefits each week during the week reported above. The Department determined that for each of the eight weeks during which Church was unentitled to benefits, he was also unentitled to the stimulus payments.

Based on the foregoing, the Department determined that Church was overpaid unemployment benefits in the total amount of \$4572.

After determining the discrepancy between the amounts reported under Church's claim and those reported by his employer, the Department sent Church a preliminary audit notice on May 13, 2010. That notice advised Church of the discrepancy and allowed him to provide a response by May 23, 2010. Church did not respond. Therefore, on June 8, 2010, the Department issued its decision holding Church had been overpaid benefits in the amount of \$4572.

Additionally, the decision issued by the Department held that the overpayment of benefits was the result of misrepresentation on Church's part. That decision was based on the fact that Church failed to report any wages whatsoever during the twelve weeks in question and that he failed to respond to the Preliminary Audit Notice.

After this appeal was filed, Investigator Jane Connor contacted Cady, Inc. and asked the employer to break down the wages earned by Church each week during the period in question. Using that information, Connor recalculated the amount of the overpayment. The revised comparison reflected the following:

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employer</i>	<i>Benefits rec'd</i>	<i>Benefits entitled</i>
04/25/09	\$ 0	\$572	\$426	\$ ---
05/02/09	0	380	426	152
05/09/09	0	667	426	---
05/16/09	0	408	426	124
05/23/09	0	771	426	---
05/30/09	0	460	426	---
06/06/09	0	627	426	---
06/13/09	0	0	426	426
06/20/09	0	529	426	---
06/27/09	0	589	426	---
07/04/09	0	386	426	164
07/11/09	0	607	426	---

Connor again determined that Church also received \$25 of federal stimulus benefits in each of the eight weeks he was unentitled to unemployment benefits which should be recouped. Therefore, at hearing, the Department amended its overpayment claim to the amount of \$4446.

At hearing, Church testified that his former girlfriend with whom he previously resided

knew his personal identification number used for unemployment purposes because he used the same PIN for everything. Church stated that the girlfriend established the claim in question and began calling in weekly claims. He stated the funds were deposited into the couple's joint checking account but that he had no knowledge of the claim or of receiving the funds. He stated he did not review the checking account records and that his former girlfriend paid the bills and managed their accounts. Church testified that his former girlfriend intercepted the mail from Workforce Development and that he did not receive the Preliminary Audit Notice and therefore did not respond to it.

REASONING AND CONCLUSIONS OF LAW

1. Overpayment

Iowa law provides that the division of job service must recover any overpayment of benefits received by a claimant regardless of whether he or she 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.² If any benefits were 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.³

An individual who is partially unemployed may receive unemployment insurance benefits if he is working less than his normal full-time week for an employer and is earning less than his weekly benefit amount plus fifteen dollars.⁴ Church's weekly benefit amount was \$426 and he was entitled to earn up to \$441 in a week and still receive some amount of unemployment benefits. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant's wages in the week that exceed 25% of the weekly benefit amount.⁵

The uncontested evidence in this case shows that the department paid out benefits to which Church was not entitled. He was employed and earning wages during eleven of the twelve weeks in question. Based on the formula appearing in the Department's rules, it appears that Investigator Connor arrived at the correct amount of the overpayment, \$4,446, after she received Church's wages broken down by week.

Further, the evidence shows Church received the erroneously paid benefits. The funds were deposited into his joint checking account with or without his knowledge. Under these circumstances, it must be held that Church received unemployment benefits to which he was not entitled even though he may not have been aware of the same.

The decision issued by the Department held Church was overpaid benefits in the total amount of \$4,572. However, in preparation for the hearing, Investigator Connor

2 Iowa Code section 96.3(7).

3 Iowa Code section 96.16(4).

4 Iowa Code § 96.19(38)(b)(1) (2009).

5 871 IAC 24.18.

received more detailed information from Church's employer as to his earnings and used the new information to recalculate the amount of the overpayment. Thus, the evidence in this case supports a finding that the amount of the overpayment was \$4,446 and the Department's decision should be modified to reflect the lower amount.

B. *Misrepresentation*

With the information available to her at the time, IWD Investigator Jane Connor understandably arrived at the conclusion that Church had intentionally supplied false information to the department in order to receive benefits to which he was not entitled. He failed to report any wages during the period in question and did not respond to the Preliminary Audit Notice.

However, as noted above, Church testified his former girlfriend filed the claims without his knowledge and intercepted his mail so that he did not receive the Preliminary Audit Notice. Church's testimony was not without credibility and the record is devoid of evidence refuting his explanation. Under these circumstances, the preponderance of the evidence does not support a finding of misrepresentation and the Department's decision must therefore be modified.

DECISION

Iowa Workforce Development's decision dated June 8, 2010, reference 01, is MODIFIED. The claimant has been overpaid benefits in the amount of \$4,446. Further, the Department has failed to show the overpayment was due to misrepresentation on Church's part.

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