

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**STEVEN SHIPP**  
**106 SW COUNTRY CLUB LANE**  
**ANKENY, IA 50023**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**KENDRA MILLS, INVESTIGATOR**

JONI BENSON, IWD  
NICK OLIVENCIA, IWD  
JODI DOUGLAS, IWD  
EMILY CHAFA, IWD

**Appeal Number: 17IWDUI258-59**  
**OC: 4/3/16**  
**Claimant: Appellant (4)**

**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, 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.

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)

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July 7, 2017

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(Decision Dated & Mailed)

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## STATEMENT OF THE CASE

Steven Shipp filed an appeal from two decisions issued by Iowa Workforce Development (IWD). In the first decision, dated April 3, 2017 (reference 03), IWD disqualified Shipp from receiving unemployment insurance benefits from June 19 through October 1, 2016. The decision states that Shipp did not meet the availability requirements of the law due to his incarceration. In the second decision, also dated April 3, 2017 (reference 04), IWD determined that Shipp was overpaid \$6,162 in unemployment insurance benefits for the dates between June 19 and October 1, 2016. The decision states that the overpayment is a result of the decision finding Shipp unavailable for work.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on May 10, 2017 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on May 24, 2017. On June 7, 2017, a

telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Kendra Mills represented IWD and presented testimony. Appellant Steven Shipp appeared and presented testimony. Exhibits 1 through 11 were submitted by IWD and admitted into the record as evidence. Exhibit A was submitted by the Appellant and admitted into the record as evidence.

### **ISSUES**

1. Whether the Appellant filed a timely appeal of IWD's decisions.
2. Whether IWD correctly determined that the Appellant was ineligible to receive unemployment insurance benefits because he was unavailable for work.
3. Whether IWD correctly determined that the Appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.
4. Whether IWD correctly determined that the overpayment was a result of misrepresentation.

### **FINDINGS OF FACT**

Steven Shipp filed a claim for unemployment insurance benefits with an effective date of April 3, 2016. Claims were filed on Shipp's account and benefits were paid for the weeks ending June 25, 2016 through October 1, 2016. The weekly benefit amount for each of those weeks, with the exception of the week ending October 1, 2016, was \$431. The benefit amount for the week ending October 1, 2016 was \$128.60. The total amount paid during those weeks was \$6,162.60. The benefits were credited to Shipp's debit card. (Exh. 3; Mills testimony).

Shipp was incarcerated in the Black Hawk County Jail, then in state prison, from June 24, 2016 through at least April 14, 2017. He was continuously incarcerated from June 24 through October 1, 2016. Once IWD learned of Shipp's incarceration, it issued two decisions. In the first decision, dated April 3, 2017, IWD determined that Shipp was not eligible to receive unemployment insurance benefits from June 19 through October 1, 2016 due to his incarceration. The decision states that Shipp did not meet the availability requirements of the law. In the second decision, also dated April 3, 2017, IWD determined that Shipp was overpaid \$6,162.60 in unemployment benefits for the time period between June 24 and October 1, 2016. The decision states that the overpayment is a result of the decision disqualifying Shipp from receiving benefits due to not being able and available to work. The decision also states that overpayment was a result of misrepresentation and, as a result, a 15% penalty will be added. (Exh. 2, 9, 11; Mills testimony).

IWD mailed the April 3, 2017 decisions to Shipp at 4711 University Ave. #50, Cedar Falls, Iowa 50613, the address where Shipp lived prior to being incarcerated. At the time the decisions were mailed, Shipp was incarcerated in state prison. IWD was aware that Shipp was incarcerated as investigator Kendra Mills interviewed Shipp by

telephone from the North Central Correctional Facility in Rockwell City, Iowa on March 31, 2017. Shipp did not receive the decisions at his previous home address due to his incarceration. On April 13, 2017, IWD workforce advisor Brian Pibal, who is stationed at the North Central Correctional Facility, printed the decisions for Shipp and gave them to him. Pibal faxed an appeal letter for Shipp on April 14, 2017. In the letter, Pibal stated that Shipp did not receive the decisions until April 13, 2017, the deadline to appeal. (Exh. 6, 9, 11; Appeal Letter).

IWD became aware of the potential overpayment based on contact from Shipp. Shipp learned that claims had been made on his unemployment insurance account while he was incarcerated through contact with the DHS Child Support Recovery Unit in February 2017, which informed him that weekly payments of child support had been paid through his unemployment benefits. Once Shipp learned of this, he made contact with IWD to report the issue. Shipp wanted to know whether he would be able to claim unemployment insurance benefits upon his release, but the IWD representative with whom he spoke informed him that his benefits were exhausted based upon claims made during the time period he was incarcerated. (Appeal Letter; Exh. 1).

Shipp suspects that an ex-girlfriend called in and made the unemployment insurance claims during the time that he was incarcerated. Shipp acknowledged that the ex-girlfriend had access to his personal information, including his PIN for filing claims and his PIN for the debit card issued from Bank of America onto which his unemployment insurance benefits were deposited. Shipp and the ex-girlfriend shared a common password on all accounts. (Shipp testimony; Exh. 6).

Shipp lived with the ex-girlfriend who he believes made the unemployment claims when he became incarcerated. She had all of the information necessary to make the unemployment insurance claims, including his social security number and PIN. Shipp testified at hearing that their relationship was tumultuous; when asked whether it concerned him that she would have access to his accounts, including debit cards for which she had the PIN, when he became incarcerated, he testified that he trusted her. She provided Shipp money one time when he was incarcerated; he did not ask her where the money came from. Shipp contacted law enforcement when he became aware that benefits had been claimed during his incarceration. Shipp testified that his ex-girlfriend told law enforcement that he told her to make the claims. Shipp indicated that law enforcement has not indicated that any charges will be filed against his ex-girlfriend regarding this matter. (Shipp testimony).

The Facts About Unemployment Insurance handbook that Shipp received in conjunction with his claim in April 2016 informs claimants that they must be able and available for work during any week when unemployment insurance benefits are claimed. The handbook states that IWD must be notified of any condition that would prevent a claimant from working or accepting work, including being in jail. (Exh. 5; Mills testimony).

## REASONING AND CONCLUSIONS OF LAW

### A. Timeliness of Appeals

Iowa Code section 96.6(2) requires that an appeal of a representative's decision must be filed by a claimant or other interested party "after notification or within ten calendar days after notification was mailed to the claimant's last known address." The Department's regulations provide that the effective date of the appeal is established by either the postmark on the appeal or the date stamp.<sup>1</sup> The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.<sup>2</sup>

The decisions at issue here were issued April 3, 2017. Shipp filed his appeal on April 14, 2017. IWD acknowledges, however, that it did not mail the decisions to Shipp's last known address. IWD was aware, through direct contact with Shipp, that he was incarcerated at the North Central Correctional Facility in Rockwell City, Iowa at the time the decisions were issued. Despite this fact, the decisions were mailed to the address where Shipp lived prior to his incarceration. An IWD workforce advisor confirmed that Shipp did not receive the decisions until April 13, 2017. He filed an appeal one day later, on April 14, 2017. At hearing, IWD acknowledged that it believes, based on the circumstances, that the appeals were filed timely. Under these circumstances, Shipp filed a timely appeal of the two decisions dated April 3, 2017.

### B. Able and Available to Work

Under Iowa law, in order to receive unemployment insurance benefits, an individual must be able to work, available for work, and be earnestly and actively seeking work.<sup>3</sup> IWD's regulations provide that a claimant who is incarcerated is not available for work.<sup>4</sup> Shipp does not dispute that he was incarcerated on the dates in question.

At hearing, IWD acknowledged that its policy is that an individual must be able and available to work the majority of the week in order to be eligible for benefits during that week. For the first week of the disputed time period, the week ending June 25, 2016, Shipp was able and available to work five of the seven days. He was not incarcerated until June 24, 2016. Under these circumstances, Shipp was able and available to work the week ending June 25, 2016. IWD's decision disqualifying him from receiving benefits the week ending June 25, 2016 was in error and must be reversed. With regard to the remainder of the disputed time period, the weeks ending July 2 through October 1, 2016, IWD's decision disqualifying Shipp from receiving benefits because he was not able and available is correct and must be affirmed.

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<sup>1</sup> 871 Iowa Administrative Code (IAC) 26.4(2).

<sup>2</sup> *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

<sup>3</sup> Iowa Code § 96.4(3) (2017).

<sup>4</sup> 871 Iowa Administrative Code (IAC) 24.23(12).

C. Overpayment

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.<sup>5</sup>

In this case, as discussed above, IWD correctly disqualified Shipp from receiving unemployment insurance benefits from the week ending July 2, 2016 through the week ending October 1, 2016. Claims were made for those weeks in the total amount of \$5,731.16. As Shipp was ineligible to receive benefits during those weeks, the benefits were overpaid.

The Department's determination that Shipp was overpaid benefits for the week ending June 25, 2016 is incorrect, based on the determination discussed above that Shipp was eligible for benefits during that week. Consequently, the Department's decision that Shipp was overpaid benefits in the amount of \$431 for that week is incorrect and must be reversed.

At hearing, Shipp argued that he did not actually receive the benefits that were paid, therefore he did not receive any overpayment. The benefits were paid to a debit card that was issued to Shipp and that required a PIN to access. The fact that Shipp shared his PIN with another individual and that individual obtained the benefits does not relieve Shipp of responsibility for the overpayment.

C. Misrepresentation

A finding of misrepresentation is supported when an individual receives benefits while not eligible "by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact."<sup>6</sup> By law, the Department must assess a penalty equal to 15% of the amount of an overpayment that occurs due to misrepresentation.<sup>7</sup>

I found Shipp's testimony that he had no knowledge that his ex-girlfriend made the claims while he was incarcerated credible. That testimony is supported by the timeline of the actions he took. As soon as CSRU made him aware of the payments, he contacted IWD to inform it of the issue. I find that Shipp did not call in the claims himself for the weeks in question, nor did he direct anyone to do so on his behalf. While Shipp's decision to share the PIN for his claim and for his debit card with his ex-girlfriend was not the soundest decision, it does not in and of itself justify a finding of misrepresentation.

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<sup>5</sup> Iowa Code § 96.3(7)(a) (2015).

<sup>6</sup> Iowa Code § 96.16(4) (2015).

<sup>7</sup> *Id.*

Under these circumstances, IWD's decision that the overpayment was a result of misrepresentation is reversed.

### **DECISION**

Steven Shipp filed a timely appeal of Iowa Workforce Development's decisions dated April 3, 2017 (reference 03 and 04). The decisions are **AFFIRMED IN PART** and **REVERSED IN PART**. IWD shall amend the time period of disqualification to June 26, 2016 through October 1, 2016. Shipp is not disqualified from receiving benefits during the week ending June 25, 2016. Additionally, IWD shall change the amount of overpayment from \$6,162.60 to \$5,731.16; Shipp was eligible for benefits during the week ending June 25, 2016, therefore the \$431 received during that week was not overpaid. Further, IWD shall change its records to reflect that the overpayment was not a result of misrepresentation. IWD shall take any additional action necessary to implement these decisions.

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