

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

**Appeal Number: 06-IWDUI-147**  
**OC: 01/09/05**  
**Claimant: Appellant (1)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**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.

**TERENCE GLASS**  
**820 NORTH 16<sup>TH</sup> STREET**  
**FORT DODGE IA 50501**

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)

July 14, 2006

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(Decision Dated & Mailed)

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871 IAC 26.14(7) - Request to Reopen  
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 June 16, 2006, reference 01, which held that the claimant was overpaid unemployment benefits in the amount of \$344.00, because he failed to report wages earned with Draco Electric for the period from October 16, 2005 to November 12, 2005.

After due notice was issued, a hearing was scheduled for a telephone conference call on July 11,

2006. The claimant did not participate. Jane Connor, Investigator, participated for Iowa Workforce Development, Investigation and Recovery.

#### 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 January 9, 2005. The claimant claimed for and received unemployment benefits during the fourth quarter of 2005.

The department audited the claimant's unemployment claim for the fourth quarter of 2005, and Draco Electric reported to the department the gross earnings paid to the claimant during the period from October 16, 2005 to December 31, 2005. The department compared the employer's wage report against the claimant's claims for the same weeks.

The claimant reported no work and wages for the weeks ending October 22, and November 12, 2005, and he received a benefit of \$334 for each week. Based on the employer's wage report of \$170 and \$340 for the same weeks, the claimant should have received benefits of \$247 and \$77 that caused an overpayment totaling \$344 (\$87,\$257).

Investigator Connor mailed a notice to the claimant regarding the \$344 overpayment, but the claimant did not respond. Since the claimant answered no to the question whether he worked the two-weeks at issue, the department concluded the claimant misrepresented his claim.

The claimant failed to respond to the hearing notice prior to the hearing. The claimant faxed a Draco Electric payroll register report at 3pm on July 11, after the close of the record. The claimant called at or the same time, and he offered no explanation for his failure to call-in prior to the hearing.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$344, 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 \$344 for the 2-weeks ending November 12, 2005 pursuant to Iowa Code section 96.16-4. The claimant misrepresented his claim for two-weeks by failing to report his work and wages. Even though the Draco payroll register was submitted after the close of the record, it was reviewed and considered as evidence in this matter. The register confirms the amount of hours worked and wages earned by the claimant, as reported by Draco in the initial audit used to compute the overpayment. The claimant did not request to reopen the record when he called in after the hearing, and he has offered no good cause to do so.

DECISION:

The decision of the representative dated June 16, 2006, reference 01 , is AFFIRMED. The claimant is overpaid benefits \$344 due to misrepresentation.

rls