

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

Appeal Numbers: 14IWDUI362-63
OC: 01/19/14
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**JEREMY MOOREHEAD
10035 DOGWOOD AVENUE
CLEAR LAKE, IA 50428**

**IOWA WORKFORCE DEVELOPMENT
JANE CONNOR, INVESTIGATOR**

TERESA HILLARY, IWD
JONI BENSON, 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)

January 23, 2015
(Dated and Mailed)

Iowa Code section 96.4-3 – Eligibility for Benefits
Iowa Code section 96.6-2 – Recovery of Overpayment Benefits

STATEMENT OF THE CASE

Claimant/Appellant Jeremy Moorehead appealed two decisions issued by Iowa Workforce Development (“IWD”) dated December 8, 2014, reference 03, finding he was not eligible for unemployment insurance benefits from February 23, 2014 through April 26, 2014 because he worked enough hours to be considered employed and effectively removed himself from the labor market and unduly limited his availability for other

work, and December 11, 2014, finding he was overpaid \$4,509 based on the December 8, 2014 decision that disqualified him as not being able and available for work.

On December 24, 2014, IWD transmitted the cases to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the cases, it mailed a copy of the administrative files to Moorehead. Prior to the hearing IWD Investigator Jane Connor submitted Exhibits A through D and mailed a copy to Moorehead.

A contested case hearing was held on January 22, 2015. Moorehead appeared and testified. Connor appeared and testified on behalf of IWD. Exhibits A through D were admitted into the record.

ISSUE

Whether IWD correctly determined the claimant is ineligible to receive unemployment insurance benefits.

Whether the Department correctly determined that the Claimant was overpaid unemployment benefits and, if so, whether the overpayment was correctly calculated.

FINDINGS OF FACT

In 2014, Moorehead received unemployment insurance benefits. IWD received information Moorehead was working while he was receiving unemployment insurance benefits and commenced an investigation.

IWD sent Ventura Locker a Wages Cross Match Form to inquire into Moorehead's earnings. Lorna Coady of Ventura Locker returned the form and reported Moorehead had worked 40 hours and earned \$500 each week from February 23, 2014 through April 26, 2014. Coady reported Moorehead became the new owner of the business as of May 6, 2014.

Connor mailed Moorehead a Notice to Appear. Moorehead appeared and prepared a statement that provides, in part, "I did claim the weeks of 3-1-14, 3-8-14, 3-15-15, 3-22-14, 3-29-14, and 4-5-14 on line and did not report any wages." (Exhibit C-2). Moorehead reported he did not report any wages because he was an independent contractor as of February 2014. Moorehead stated he contacted IWD and a representative from IWD told him that he did not need to report wages if he was an independent contractor.

Connor sent Moorehead's information to IWD's tax bureau for a determination of whether Moorehead was an independent contractor or employee of Ventura Locker. On October 24, 2014, IWD Field Auditor Justin Demsky concluded Moorehead was an employee of Ventura Locker. He noted Coady had reported Moorehead was managing the locker, Moorehead used Coady's tools and facility, all bills continued to be in Coady's name, Coady requested Moorehead complete certain tasks the way she wanted them

performed, Coady required Moorehead to e-mail her every day with information related to the processing of animals and who the customers were, Coady required Moorehead to scan her a copy of the bank sheet for every deposit, Coady purchased office supplies paid from her bank account, and Coady restricted who Moorehead could hire.

Connor met with Moorehead again. Moorehead completed a second statement stating he claimed unemployment benefits from March 1, 2014 through April 26, 2014 because he understood he was an independent contractor. Moorehead relayed that he worked Monday through Friday from 8:30 through 5:30 with no weekends.

Connor determined that because Moorehead worked 40 hours per week he was not able and available for work. IWD later sought to recover the benefits \$4,509 in unemployment benefits Moorehead received from February 23, 2014 through April 26, 2014.

REASONING AND CONCLUSIONS OF LAW

I. Able and Available

To be eligible to receive unemployment benefits, an unemployed individual must be able and available for work, and must be earnestly and actively seeking work.¹ A claimant is disqualified for being unavailable for work if “[t]he claimant’s availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.”²

During the period of February 23, 2014 through April 26, 2014 Moorehead was working full-time at the locker. Moorehead contends he sought unemployment benefits during this period because he was an independent contractor. Irrespective of whether Moorehead was working as an independent contractor or as an employee³, Moorehead was working full-time at the locker, from 8:30 a.m. through 5:30 p.m. Monday through Friday. I cannot conclude IWD erred in determining Moorehead was working to such a degree that Moorehead had removed himself from the labor market.

II. Overpayment

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acts in good faith and is not otherwise at fault.⁴ IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.⁵

¹ Iowa Code § 96.4(3).

² 871 IAC 24.23(23).

³ The issue of whether Moorehead was an independent contractor or employee of Ventura Locker was not certified for hearing to me.

⁴ Iowa Code § 96.3(7) (2013).

⁵ *Id.*

Moorehead received \$4,509 in unemployment benefits for the period of February 23, 2014 through April 26, 2014. Because Moorehead was working full-time and not able and available for work. IWD has established Moorehead received an overpayment of \$4,509.

DECISION

IWD's decisions dated December 8, 2014, reference 03, and December 11, 2014, reference 04, are AFFIRMED.

hlp