

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

**Appeal Number:** 13-IWDUI-415  
**OC:** 07/01/2012  
**Claimant:** Appellant (1, 2, 3)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**MARY CHWIRKA**  
**3630 JONES STREET**  
**SIOUX CITY, IA 51104-2050**

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

DAVE EKLUND, IWD  
TERESA HILLARY, 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.

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(Administrative Law Judge)

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October 10, 2013

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(Dated and Mailed)

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

**STATEMENT OF THE CASE**

Mary Chwirka filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated August 15, 2013, Reference 02. In this decision, IWD determined that Ms. Chwirka was overpaid \$1,322 in unemployment insurance benefits for six weeks between July 1, 2012 to November 24, 2012. The decision letter stated that Ms. Chwirka had “incorrectly reported wages earned with Western Iowa Tech.”

The case was transmitted from IWD to the Department of Inspections and Appeals on

September 3, 2013 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on September 10, 2013. The telephone hearing was scheduled to take place on September 25, 2013, at 3 p.m. before Administrative Law Judge Barbara Tapscott.

At the scheduled date and time, Claimant/Appellant Chwirka appeared for the hearing. No one from IWD appeared for the hearing. I waited ten minutes for an IWD representative to appear. Ms. Chwirka indicated she wanted to proceed with the hearing. Ms. Chwirka testified.

IWD provided several documents when it transmitted the appeal file. Those documents were identified and admitted into the record without objection. Those documents include:

- IWD Ex. 1 – Appeal Letter from Claimant Chwirka received 8/26/2013;
- IWD Ex. 2 – IWD Decision Overpayment Worksheet;
- IWD Ex. 3 – IWD Preliminary Audit Notice to Chwirka dated 7/01/2012;
- IWD Ex. 4 – IWD Crossmatch Document;
- IWD Ex. 5 – Information from Hawarden Regional Healthcare re: Chwirka wages;
- IWD Ex. 6 – IWD Crossmatch Audit Worksheet;
- IWD Ex. 7 – Information from Western Iowa Tech re: Chwirka wages;
- IWD Ex. 8 – IWD Notice of Decision dated 8/15/2013.

The hearing record was left open until noon on September 26 p.m. to allow Claimant Chwirka time to submit the following documents that were admitted into the record:

- Appellant Ex. A – IWD Preliminary Audit Notice to Chwirka dated 7/01/2012;
- Appellant Ex. B – Overpayment Statement dated to Chwirka dated 8/16/2013;
- Appellant Ex. C – Chwirka Letter to IWD dated 5/14/2013.

### **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**

Mary Chwirka was employed at Hawarden Regional Healthcare up until June 30, 2012. During the first week of July 2012, she received a final check from the healthcare center for \$5,655. The check was in part for work she performed prior to July 1, 2012, as well as sick leave, and expenses, including mileage. She estimated about \$2,000 was for wages for work she performed prior to July 1, 2012. (Chwirka Testimony).

After Claimant Chwirka left the healthcare job, she applied for unemployment benefits. According to IWD documents, she received unemployment benefits of \$396 for the week ending July 7, 2012. (IWD Ex. 6).

When Claimant Chwirka received the \$5,655 check from Hawarden Regional Healthcare, she did not report it to IWD because it was not a severance payment – rather was a payment for expenses, out-of-pocket costs, and wages for work performed prior to July 1, 2012. (Chwirka Testimony).

According to an IWD Crossmatch Audit Worksheet, Claimant Chwirka was paid unemployment benefits of \$396 a month from the week ending July 7, 2012 through the week ending October 6, 2012. Hawarden Regional Healthcare reported the \$5,655 check paid to Ms. Chwirka the week ending July 7, 2012, but did not report any wages paid to her after that week. (IWD Ex. 6). On a wage crossmatch form filled out by a Hawarden official dated January 23, 2013, the employer indicated that Ms. Chwirka did not work any hours from July 1, 2012 through October 6, 2012. The document reflected that she was paid \$5,655 for “non regular pay” during the week ending July 7, 2012. Someone had also marked an “x” in a box titled, “If No Work was performed in the weeks listed below (X this box).” (IWD Ex. 5).

In the fall of 2012, Claimant Chwirka was hired by Western Iowa Teach to conduct an on-line training course. (Chwirka Testimony). According to an IWD Crossmatch Audit Worksheet, Claimant Chwirka made weekly reports of the hours worked and wages earned during the week ending October 6, 2012 through the week ending December 22, 2012. (IWD Ex. 4). The crossmatch information reflected five entries for weeks ending Oct. 13, 20, November 3, 17, and 24, where the information reported by Claimant Chwirka reported did not match the wages reported by the college. (IWD Ex. 4).

Using the wage crossmatch information from Hawarden Regional Healthcare and Western Iowa Tech, (IWD Ex. 2, 4, 5, 6), IWD determined Chwirka received the following overpayments:

Week Ending	Wages Claimant Reported	Wages Employer Reported	UI Benefits Paid	UI Benefits Entitled	Underpayment	Overpayment
07/07/12	\$0	\$5,655	\$396	\$0		\$396
10/13/12	\$98	\$282	\$396	\$213		\$183
10/20/12	\$48	\$146	\$396	\$349		\$47
11/03/12	\$258	\$404	\$237	\$91		\$146
11/17/12	\$240	\$488	\$255	\$0		\$255
11/24/12	\$200	\$505	\$295	\$0		\$295

According to IWD, Claimant Chwirka received a Preliminary Audit Notice from IWD dated April 4, 2013, stating that the agency believed she had been overpaid \$1,322 in unemployment benefits. According to the audit notice, she had until April 15, 2013, to provide information to IWD to discuss the discrepancy between what she reported and what her employers reported. Someone from IWD wrote a note on the bottom of the audit notice that IWD submitted for hearing stating, “Clmt did not respond.”(IWD Ex. 3).

Claimant Chwirka maintains she did respond. She submitted a copy of a Preliminary

Audit Notice sent to her from IWD dated 4/8/2013 that states she had a potential overpayment of \$1,211. The due date in her copy is blank. (Claimant Ex. A).

Claimant Chwirka sent IWD a letter on May 14, 2013, stating she was writing in “in regards to your letter claiming there are discrepancies in reporting and possible overpayments to myself, Mary Chwirka, SS#[\_\_\_\_\_].” (Appellant Ex. C).

Ms. Chwirka made three arguments in her May 14 letter that she reiterated in her August appeal letter and at hearing:

One, with regard to the alleged overpayment of \$396 for the first week of July, 2012, the \$5,655 check she received from Hawarden Regional Healthcare was for reimbursement of expenses and for wages she earned while working prior to July 1, 2012. (Chwirka Testimony).

Two, with regard to the alleged overpayments related to her employment with Western Iowa Tech – some of the pay she received was due to on-line training that she conducted. Those payments did not get figured into the general wages she was paid out at the end of the month, rather were sent out at times other than when she reported the time she work on the on-line training. She noted that, “the wages were reported, just not at the same week.” (Chwirka Testimony).

Three, she did not receive any benefits for the last week of December 2012, which she believed she was owed. (Chwirka Testimony).

On August 15, 2013, IWD issued a Notice of Decision advising Ms. Chwirka the agency believed she had been overpaid \$1,322 in benefits that must be repaid before she may receive any further employment benefits. The decision letter also stated that a 15 percent penalty was added to that amount because of misrepresentation. (IWD Ex. 8).

Claimant Chwirka received an Overpayment Statement on August 16, 2013, indicating she owed \$1,520.30, which includes a 15 percent penalty of \$198.30. (Appellant Ex. B).

Ms. Chwirka filed a timely appeal that was stamped received by IWD on August 26, 2013. Although the agency’s August 15, 2013 Notice of Decision stated that her appeal must be received by August 25, 2013, the notice also states that if that date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. August 25, 2013 was a Sunday. As such, Ms. Chwirka’s appeal received August 26, 2013, was timely. (IWD Exs. 8, 1).

Claimant Chwirka stated in her appeal letter, and reiterated at hearing, that after she received the preliminary overpayment notice in April of 2013, she wrote the agency a letter asking to sit down with an IWD representative to discuss the overpayment. She did not receive any communication until she received the overpayment decision.

(Chwirka Testimony, IWD Ex. 1).

Ms. Chwirka testified at hearing that she did not dispute the wage information submitted by Hawarden Regional Healthcare, but disputed that it should have counted toward a \$365 overpayment when it was for expenses and wages for work performed prior to July 1, 2012, when she started receiving benefits. (Chwirka Testimony).

She also did not dispute what wages were reported by her and by Western Iowa Tech, and reiterated that she did not know when she was going to get paid for the on-line training, so she reported when she did the training and apparently, what she reported did not match the wages she was ultimately paid that were reported by the community college. (Chwirka Testimony).

She reiterated that she was never paid any benefits for the week ending December 29, 2012. (Chwirka Testimony). IWD's records reflect Ms. Chwirka she did not claim any wages earned for the week ending December 29, 2012, nor did any employer report any wages, nor did she receive any unemployment income. Under the heading titled "UI Benefits Paid," there is an entry stating "APPRVD." (IWD Ex. 4).

There was no IWD representative at the hearing to address: 1) why Ms. Chwirka received an April 8, 2013 Preliminary Audit Notice that appeared different than the one submitted by the agency; 2) her assertions related to the \$5,655 payment from Hawarden Regional Healthcare Center or the timing of her payments for her on-line training work for Western Iowa Tech; and 3) why she received no benefits for the week ending December 29, 2012.

### **REASONING AND CONCLUSIONS OF LAW**

There are two issues to decide in this case. The first issue is whether the claimant was overpaid unemployment benefits. Second, if there was an overpayment, whether the overpayment was caused by misrepresentation on the part of the claimant.

#### **I. Overpayment**

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD can recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD 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>1</sup>

Overpayments are affected by whether an individual is totally or partially employed. If an individual is not totally or partially unemployed, the individual is not entitled to unemployment benefits.<sup>2</sup> An individual is totally unemployed in any week the individual has no payable wages.<sup>3</sup>

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<sup>1</sup> Iowa Code § 96.3(7)(a) (2009).

<sup>2</sup> *Id.* § 96.3.

<sup>3</sup> *Id.* § 96.19(38)a.

An individual is deemed partially unemployed when the individual works less than the individual's regular full-time week and earns less than the individual's weekly benefit, plus \$15.<sup>4</sup> Claimant Chwirka's weekly benefit amount is \$396. To be partially unemployed, Ms. Chwirka's wages must be less than \$411 (\$396 + \$15).

A. Totally Unemployed

In this case, Claimant Chwirka disputes that the \$5,655 paid to her by Hawarden Regional Healthcare was for work she performed in the first week of July 2012 – when she received \$396 in unemployment benefits. No one from IWD appears to dispute her testimony. Claimant Chwirka was obligated under the law to report wages earned that first week of July 2012.<sup>5</sup> There was no one from IWD present to dispute her testimony that she did not work the first week of July. As such, I find there is insufficient evidence in the record to conclude that Claimant Chwirka was overpaid \$396 in benefits for the week ending July 7, 2012.

Claimant Chwirka also asserts she did not receive benefits for the week ending December 29, 2012. There is evidence in IWD's Exhibit 4 that Ms. Chwirka reported no wages for that week, no employer reported wages for her, she wasn't paid any benefits, and there is a notation "APPRVD" indicating she was approved for benefits for that week. There was no one from IWD to explain why she was not paid benefits. As such, I find that Claimant Chwirka was entitled to \$396 in benefits for the week ending December 29, 2012.

B. Partially Unemployed

IWD found that Ms. Chwirka was partially unemployed for the weeks ending October 13 and 20 and November 3, 2012 because she earned less than \$411. Ms. Chwirka does not dispute she was partially unemployed those weeks.

When an individual earns less than the individual's weekly benefit amount plus \$15, "the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount."<sup>6</sup> One-fourth of Ms. Chwirka's weekly benefit amount of \$396 is \$99.

For the week ending October 13, 2012, Ms. Chwirka received \$282 in wages and \$396 in unemployment benefits. Subtracting one-quarter (or \$99) from Ms. Chwirka's benefit amount from her actual weekly wage of \$282 is \$183. Deducting \$183 from Ms. Chwirka's weekly benefit is \$213. Because Claimant Chwirka was only entitled to receive \$213 in unemployment benefits, IWD has proven she received a \$183 overpayment for the week ending October 13, 2013.

For the week ending October 20, 2012, Ms. Chwirka received \$146 in wages and \$396 in

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<sup>4</sup> *Id.* § 96.19(38)b(1).

<sup>5</sup> 871 Iowa Administrative Code (IAC) § 24.2(1)g.(2).

<sup>6</sup> 871 IAC 24.18.

unemployment benefits. Subtracting one-quarter (or \$99) of Ms. Chwirka's benefit amount from her actual weekly wage of \$146 is \$47. Deducting \$47 from Ms. Chwirka's weekly benefit amount of \$396 is \$349. Because Claimant Chwirka was only entitled to receive \$349 in unemployment benefits, IWD has proven she received a \$47 overpayment for the week ending October 20, 2013.

For the week ending November 3, 2012, Ms. Chwirka received \$404 in wages and \$237 in unemployment benefits. Subtracting one-quarter (or \$99) of Ms. Chwirka's weekly benefit amount from her actual weekly wage of \$404 is \$305. Deducting \$305 from Ms. Chwirka's weekly benefit amount of \$396 is \$91. Because Claimant Chwirka was only entitled to receive \$91 unemployment benefits, IWD has proven she received a \$146 overpayment for the week ending November 3, 2012.

### C. No Entitlement to Benefits

IWD found that Claimant Chwirka reported wages of \$240 the week ending November 17, 2012 from Western Iowa Tech, but the college reported wages of \$488. She does not dispute that she was paid \$255 in unemployment benefits for that week. IWD correctly determined that she was not entitled to any unemployment benefits for this week because her wages of \$488 exceeded \$411. As such, IWD has established an overpayment of \$255 for the week ending November 17, 2012.

Similarly, IWD found that Claimant Chwirka reported wages of \$200 the week ending November 24, 2012, but the college reported wages of \$505. She does not dispute that she was paid \$295 in unemployment benefits for that week. IWD correctly determined that she was not entitled to any unemployment benefits for this week because her wages of \$505 exceeded \$411. As such, IWD has established an overpayment of \$295 for the week ending November 24, 2012.

## **II. Misrepresentation**

Because I find there is insufficient evidence to conclude that Claimant Chwirka was overpaid \$396 in benefits for the week ending July 7, 2012, the issue of misrepresentation with regard to that overpayment is moot.

Moreover, although I find that Claimant Chwirka was overpaid related to the wages she reported from Western Iowa Tech and the wages the community college reported, it is clear she did not deliberately try to deceive IWD about wages she received from her employer. She testified credibly that she did not know when she would be paid for the on-line training and submitted information as best she could. There was no one present from IWD to refute her testimony.

## **DECISION**

Iowa Workforce Development's decision dated August 15, 2013, reference 2 is REVERSED in part, AFFIRMED in part, and MODIFIED in part as set forth below:

(1) IWD's determination that Claimant Mary Chwirka was overpaid \$396 for the week

endingly July 7, 2012 is **reversed**.

(2) IWD's determination that Claimant Chwirka received \$926 in overpayments for weeks ending October 13, 20 and November 3, 17 and 24 is **affirmed**.

(3) IWD erroneously failed to pay Claimant Chwirka \$396 in unemployment benefits for the week ending December 29, 2012. As such, the amount of overpayment she owes should be **modified**, with \$396 should deducted from the \$926 overpayment set forth above in (2) – bringing her total overpayment to \$530.

(4) IWD's determination that Claimant Chwirka engaged in misrepresentation is **reversed**. Accordingly, she should **not** be charged interest for her overpayment.

IWD shall take any action necessary to implement this decision.

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