

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

**Appeal Number:** 14IWDUI28  
**OC:** 12/30/12  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**DONALD LAND**  
**3213 SW COVES DRIVE**  
**ANKENY, IA 50023**

**INVESTIGATIONS AND RECOVERY, IWD**  
**DAVE EKLUND, INVESTIGATIONS**

JONI BENSON, 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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May 23, 2014

(Dated and Mailed)

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Iowa Code section 96.6-2 – Timeliness of Appeal  
Iowa Code section 96.6-2 – Recovery of Overpayment Benefits  
Iowa Code section 96.16-4 – Misrepresentation

**STATEMENT OF THE CASE**

Claimant/Appellant Donald Land filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated December 23, 2013, reference 01, finding he had been overpaid \$529 for the six weeks between May 26, 2013 and July 6, 2013 because he failed to correctly report wages he earned from Durham D & M, LLC (“Durham”). IWD determined the overpayment was due to misrepresentation.

On April 15, 2014, IWD transmitted the case to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Land. A Notice of Telephone Hearing was sent to the parties on April 25, 2014, scheduling a contested case hearing for May 22, 2014.

A contested case hearing was held on May 22, 2014. Land appeared and testified. No one appeared on behalf of IWD as directed by the Notice of Telephone Hearing. I waited five minutes to accommodate a late call from a representative for IWD before proceeding with the hearing. No one appeared on behalf of IWD. Exhibits 1 through 8 were admitted into the record.

### **ISSUES**

Whether the Claimant filed a timely appeal.

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

Whether IWD correctly determined the overpayment was a result of misrepresentation.

### **FINDINGS OF FACT**

Land has received unemployment insurance benefits in the past. IWD conducted an audit of Land's case. IWD learned Land was working for Durham D & M LLC ("Durham"). IWD requested wage information from Durham. IWD found Land received the following overpayments:

Week Ending	Wages Claimant Reported	Wages Employer Reported	UI Benefits Paid	UI Benefits Entitled	Underpayment	Overpayment
06/01/13	\$0	\$335	\$139	\$0		\$139
06/08/13	\$100	\$335	\$73	\$0		\$73
06/15/13	\$75	\$205	\$98	\$0		\$98
06/22/13	\$100	\$206	\$73	\$163		\$73
06/29/13	\$150	\$262	\$23	\$154		\$23
07/06/13	\$50	\$262	\$123	\$212		\$123

IWD concluded Land received a total overpayment of \$529. Land conceded he was overpaid, but denied intentionally misrepresenting his wages.

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

#### **I. Timeliness of Appeals**

Iowa Code section 96.6(2) requires a claimant to file an appeal of a representative's decision "within ten calendar days after notification was mailed to the claimant's last

known address.” The Iowa Supreme Court has determined that timely appeal is both mandatory and jurisdictional.<sup>1</sup>

Land filed an appeal of the December 23, 2013, reference 01 decision on April 9, 2014. Land testified he did not receive a copy of the decision dated December 23, 2013, reference 01. Land reported he was unaware of the alleged overpayment until he received repayment notices from IWD. After receiving notice of the decision, Land appealed. A lack of notice constitutes good cause for failing to timely file an appeal. No one appeared from IWD to rebut Land’s contention.

## **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 acted in good faith and was not otherwise at fault.<sup>2</sup> 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.<sup>3</sup>

An individual is totally unemployed in any week the individual has no payable wages.<sup>4</sup> 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>5</sup> An individual who is totally unemployed in any week must be paid benefits equal to the individual’s weekly benefit amount.<sup>6</sup> An individual who is partially unemployed shall be paid an amount equal to the individual’s weekly benefit amount, less the portion of wages payable to the individual with respect to that week in excess of one-fourth of the individual’s weekly benefit amount.<sup>7</sup> The benefit amount is rounded to the lower multiple of one dollar.<sup>8</sup>

Land does not contest he received an overpayment. The overpayment amount is deemed admitted. Land agrees he received a \$529 overpayment.

## **III. Misrepresentation**

IWD determined the overpayment occurred because of misrepresentation. If an individual, by reason of a nondisclosure or misrepresentation receives unemployment benefits, IWD may either deduct the overpayment amount from any future benefits payable to the individual or seek repayment directly from the individual.<sup>9</sup> No one appeared from IWD to explain IWD’s contention that the overpayment was due to

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<sup>1</sup> *Beardslee v. Iowa Dep’t of Job Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

<sup>2</sup> Iowa Code § 96.3(7) (2009).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 96.19(38) a.

<sup>5</sup> *Id.* § 96.19(38) b(1).

<sup>6</sup> *Id.* § 96.3(2).

<sup>7</sup> *Id.* § 96.3(3).

<sup>8</sup> *Id.*

<sup>9</sup> Iowa Code § 96.16(4).

misrepresentation. Land reported the overpayment occurred by a mistake. IWD has not proven the overpayment was due to misrepresentation.

### **DECISION**

Land filed a timely appeal. IWD's decision dated December 23, 2014, reference 01 is affirmed in part, and reversed in part. IWD correctly found Land received a \$529 overpayment, but has not proven the overpayment was due to misrepresentation.

hlp