

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

Appeal Number: 10IWDUI293
OC: 12/14/08
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 Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

NICHOLAS JONES
1205 8TH STREET
MILFORD, IA 51351-1602

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.

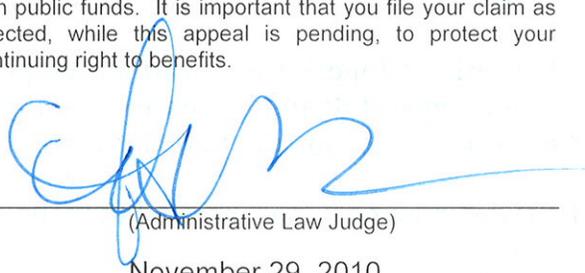
IOWA WORKFORCE DEVELOPMENT INVESTIGATIONS AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50309

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.

DAN ANDERSON, IWD

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)

November 29, 2010

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE

Claimant Nicholas Jones filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated September 15, 2010, reference 04. IWD determined Jones received a \$615 overpayment between December 13, 2009 and January 2, 2010, due to misrepresentation.

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 Jones.

A Notice of Telephone Hearing was issued on October 24, 2010, scheduling a hearing for November 24, 2010. The Notice of Telephone Hearing contained the wrong issue. A

Corrected Notice of Telephone Hearing was issued on November 3, 2010, identifying the correct issues.

On November 24, 2010, a contested case hearing was held before Administrative Law Judge Heather L. Palmer. Jones did not appear. The Notice of Telephone Hearing and Corrected Notice of Telephone Hearing were sent to Jones's last-known address by first class mail. Neither copy was returned as undeliverable mail. John Dodge appeared and testified on behalf of IWD. Documents 1 through 6 were admitted into the record.

ISSUES

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

Whether the overpayment was the result of misrepresentation.

FINDINGS OF FACT

Jones received unemployment benefits in December 2009 and January 2010. IWD determined Jones's weekly benefit amount was \$341. During the weeks ending December 19, 2009, December 26, 2009, and January 2, 2010, Jones did not report any wages. IWD learned Jones was working for Jones Construction Inc.¹

IWD verified Jones's wages with his employer. Jones Construction Inc. reported Jones earned wages of \$542 for the week ending December 19, 2009, \$157 for the week ending December 26, 2009, and \$262 for the week ending January 2, 2010.

IWD determined Jones received the following overpayments

Week Ending	Wages Reported	Wages Received	UI Paid	UI Entitled	Overpayment
12/19/09	\$0	\$542	\$341	\$0	\$341
12/26/09	\$0	\$157	\$341	\$269	\$72
1/2/10	\$0	\$262	\$341	\$164	\$177

REASONING AND CONCLUSIONS OF LAW

1. 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.² IWD may, in

¹ Dodge incorrectly entered the employer number on the IWD system. Decision, reference 04, identified the incorrect employer as Steven's Cafe & Catering. Jones appealed and reported he has never worked for Steven's Cafe & Catering. Dodge sent out an amended decision, reference 05, on September 24, 2010.

² Iowa Code § 96.3(7) (2009).

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.³

An individual is totally unemployed in any week the individual has no payable wages.⁴ 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 \$15.⁵

Jones's weekly benefit amount was \$341. \$341 plus \$15 is \$356. Dodge testified that for the week ending December 19, 2009, Jones received wages exceeding \$356. During this week he was not entitled to any unemployment benefits. Jones also received a \$25 Economic Stimulus payment. Because Jones was not entitled to any unemployment benefits, he was not entitled to receive the Economic Stimulus payment.

For the weeks ending December 26, 2009 and January 2, 2010, Jones received wages less than \$356 and was partially unemployed. 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."⁶ One-fourth of Jones's weekly benefit amount is \$85. For the week ending December 26, 2009, Jones received \$157 in wages. Subtracting \$85 from \$157 is \$72. Deducting this from his weekly benefit amount is \$269. Because Jones was only entitled to receive \$269 in unemployment benefits, Jones received an overpayment of \$72 for the week ending December 26, 2009.

For the week ending January 2, 2010, Jones received \$262 in wages. Subtracting \$85 from \$262 is \$177. Deducting this from his weekly benefit amount is \$164. Because Jones was only entitled to receive \$164 in unemployment benefits, he received an overpayment of \$177 for the week ending January 2, 2010.

The record supports IWD's determination that Jones received a total overpayment of \$615.

2. Misrepresentation

IWD determined the overpayments 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.⁷ During the weeks in question, Jones did not report he received any income to IWD and accepted his

³ *Id.*

⁴ *Id.* § 96.19(38)a.

⁵ *Id.* § 96.19(38)b(1).

⁶ 871 IAC 24.18.

⁷ *Id.* § 96.16(4).

full weekly benefit amount while accepting wages from his employer. Jones did not provide any written explanation for his actions and inactions with his notice of appeal. IWD's decision is affirmed.

DECISION

IWD's correctly found Jones received a \$615 overpayment due to misrepresentation, and its decision is affirmed.

hlp