

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

Appeal Number: 05-IWDUI-005
OC: 02/22/04
Claimant: Appellant (1)

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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JONATHON FENTON
PO BOX 6
MIDDLETON IA 52638

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
INVESTIGATIONS 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

(Administrative Law Judge)

January 28, 2005

(Decision Dated & Mailed)

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 December 22, 2004, reference 07, which held that the claimant was overpaid unemployment benefits in the amount of \$1,045.00, because of misrepresentation in failing to report wages earned for the 6-weeks ending June 26, 2004.

After due notice was issued, a hearing was held by telephone conference call on January 24, 2005. The claimant participated. Iowa Workforce Development, Investigation and Recovery participated

by Investigator, Karen von Behren.

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 February 22, 2004.

A wage cross-match audit was done on the claimant's claim for the second quarter of 2004. Representatives of Manpower Inc. of Cedar Rapids, and MetroGroup Corp. responded to the audit by reported the hours worked and the gross wages earned by the claimant during a review period from March 28, 2004 to June 26, 2004. The department compared the employer's report of wages against the claimant's unemployment claims for the same weeks.

As to the Manpower wages earned by the claimant, the department determined that he had an overpayment totaling \$772 for four weeks, to wit: week ending April 17, 2004 - \$43; week ending April 24 - \$294; week ending May 1 - \$193; and week ending May 8 - \$192. The claimant reported earning no wages for the weeks ending April 17 and April 24, and \$174, and \$175 for the weeks ending May 1, and May 8. The claimant was entitled to a partial benefit of \$251 for the week ending April 17, but no benefits for the three remaining weeks due to earning excessive wages.

As to MetroGroup wages earned by the claimant, the department determined that he had an overpayment totaling \$323 for the two weeks ending June 19 (\$294), and June 26 (\$29). The claimant reported no wages for the week ending June 19, and \$150 for the week ending June 26.

Investigator von Behren mailed a notice to the claimant regarding an \$882 overpayment on November 18, 2004 that she later discovered was in error due to a quit disqualification that caused an overpayment for the week ending July 3, 2004. Ms. Von Behren mailed a corrected audit and notice regarding the \$1,045 overpayment to the claimant on December 10, 2004 to his address of record.

After the appeal, Investigator von Behren mailed a memo to the claimant dated January 19, 2005 that included audit information relied upon by the department to calculate the \$1,045 overpayment. The claimant received the memo. Ms. von Behren concludes the claimant misrepresented his claims by answering no to the question whether he worked for the weeks ending April 17, April 24, and June 19, 2004. The claimant had prior unemployment experience in filing claims for the year 2003.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$1,045, 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 \$1,045 for the 6-weeks ending June 26, 2004 pursuant to Iowa Code section 96.14. The claimant misrepresented three of the six weeks he was overpaid benefits by failing to acknowledge his work and report his wages. The claimant did not have any evidence to refute the employers' report of his wages, and the department's determination of the overpayment.

DECISION:

The decision of the representative dated December 22, 2004, reference 07, is AFFIRMED. The claimant is overpaid benefits \$1,045 due to misrepresentation.

rls