

The claimant did not participate. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Karen von Behren. Department Exhibit One was received.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, 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 27, 2005. The department audited the claimant's claim for the first quarter of 2005. A Wal-Mart Stores representative submitted an employee earnings history to the department that showed the claimant's wages for the audit period.

The department compared the employer's audit report against the claimant's unemployment claims for the same weeks. Investigator von Behren noted the claimant received 50.77 hours of vacation pay after last performing work on March 1, 2005. In addition, the claimant had two-days of regular earnings (February 28 and March 1) during the week ending March 5, 2005 in the amount of \$201.

The vacation pay was listed on the employer's protest to the claimant's unemployment claim that totaled \$748.56. Based on a five-day workweek, the vacation pay would represent \$149.77 for each of the five days. Investigator von Behren applied three of the vacation days (March 2,3,4) to the week ending March 5, 2005 that meant the claimant had regular earnings of \$201 and vacation pay of \$449 for a total earnings of \$650. Von Behren applied the remaining two-days of vacation pay, \$300, to the following week ending March 12, 2005.

The claimant reported regular earnings of \$265 for the week ending March 5, and no earnings for the week ending March 12, 2005, for which he received benefits of \$152 and \$300. Based on the employer's report of earnings (regular pay and vacation pay), the claimant was not entitled to any benefit for the week ending March 5, and a partial benefit of \$34 for the week ending March 12 that causes the overpayment of \$152 and \$300, for a total of \$452.

Investigator von Behren mailed a notice with the audit documentation to the claimant on September 7, 2005, but he did not respond. Since the claimant failed to report his vacation pay when filing his claims, von Behren concluded he misrepresented his claim.

After the appeal, von Behren checked with the employer's payroll representative that caused an adjustment of the vacation pay from \$449 to \$447, which reduced the overpayment by \$2.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$452, 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 \$450 for the 2-weeks ending March 12, 2005 pursuant to Iowa Code section 96.16-4. The claimant misrepresented his claim by failing to report his vacation pay. The department adjusted the overpayment by lowering it \$2 due to a slight reduction of the vacation pay amount.

DECISION:

The decision of the representative dated September 28, 2005, reference 02, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$450 due to misrepresentation.

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