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

Appeal Number: **06-IWDUI-089**
OC: 01/30/05
Claimant: Appellant (2)

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 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.

BEATRICE B CLUPPER
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7324 MAPLE DRIVE
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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
INVESTIGATION 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)

April 28, 2006
(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated March 3, 2006, reference 07, which held that the claimant was overpaid unemployment benefits in the amount of $269.00, because she incorrectly reported her wages with the University of Phoenix during a period between July 3, 2005 to September 17, 2005.

After due notice was issued, a hearing was held by telephone conference call on April 24, 2006.

The claimant participated, as did her husband, Attorney, Darwin Clupper. Iowa Workforce Development, investigation and Recovery, participated by Irma Lewis, Investigator.

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 that: The claimant filed a claim for unemployment benefits with an effective date of January 30, 2005. The department audited the claimant's claim for the third quarter of 2005, and a representative of the University of Phoenix reported wages paid to the claimant.

The claimant began working for the University of Phoenix as an adjunct professor in June 2005, and she did not receive any contract or statement as to the payment of wages. The claimant was paid when the student's course work was completed. Upon advice from a department representative, the claimant estimated her weekly wages and reported them while claiming benefits.

The department compared the employer's wage report against the claimant's unemployment claims for the same weeks. The department concluded after reviewing 14-weeks that the claimant had 4-weeks of overpayment totaling $675, and 4-weeks of under-payment totaling $406, for a net overpayment of $269. After sending a notice to the claimant regarding the overpayment, she paid and satisfied the amount prior to the issuance of the decision.

The claimant appealed the decision on the basis that she accurately reported her wages. The claimant did not learn until sometime later in her employment with University that she was being compensated for her in-person work with students, but not her online time with their course work.

After reviewing the 14-week audit, it is noted that the claimant reported gross wages totaling $3,591 while the University reported $3,465.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits $269.00.

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 NOT overpaid benefits $269.00 for the 14-week period ending September 17, 2005 pursuant to Iowa Code Section 96.3-7. The wage information reported by the University is not reliable. The University lists hours and wages on a week-to-week basis, yet it states that she worked on a contract basis that is not established by the evidence in this case. The claimant offered credible testimony that she was paid for her in-person student contact and that she accurately reported those wages. The claimant reported more wages earned during the audit period than the employer, and yet, the department concludes she is overpaid benefits based on how the employer representative conducted a breakdown of the earnings. The employer representative offered no information as to how it determined the claimant worked so many hours in any given week, and how it determined she was compensated.

DECISION:

The decision of the representative dated March 3, 2006, reference 07, is REVERSED. The claimant is NOT overpaid benefits $269.00.

rls