

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

Appeal Number: 08-IWDUI-124
OC: 10/28/07
Claimant: Appellant (4)

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.

DAVID N SCHMIDT
312 S 5TH STREET
MAPLETON IA 51034-1102

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

October 28, 2008

(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 September 5, 2008, reference 04, which held that the claimant was overpaid unemployment benefits in the amount of \$1,016.00, because he failed to report wages earned with Iowa Tech Community College, and Siouxland Paramedics for the period from November 4, 2007 to January 5, 2008.

After due notice was issued, a hearing was scheduled for a telephone conference call on October 13, 2008 that was re-scheduled and held on October 27. The claimant participated in the October 13 hearing, but not the re-scheduled hearing. Investigator Finley, participated for Iowa Workforce

Development, Investigation and Recovery. Claimant Exhibit A and Department Exhibit One were received as evidence.

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 October 28, 2007. The claimant claimed for and received unemployment benefits during the fourth quarter of 2007.

The department audited the claimant's unemployment claim for the fourth quarter of 2007, and representatives for Iowa Tech Community College and Siouxland Paramedics reported to the department the gross earnings paid to the claimant during the period from November 4, 2007 to January 5, 2008. The department compared the employer's wage report against the claimant's claims for the same weeks.

The initial department audit determined the claimant was overpaid benefits \$1,016, but the claimant appealed, and he provided documentation (Exhibit A) that caused Investigator Finley to revise the amount of the overpayment (Department Exhibit One). Finley reviewed the revised audit overpayment (\$678), and he sent the documentation that supported it to the claimant.

Finley concluded the claimant misrepresented his claim for benefits by failing to report his weekly teaching earnings (\$51), and Siouxland Paramedics earnings for four of the seven weeks he had an overpayment.

The claimant was not available when called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$1,016.00, 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 \$678 for the 5-weeks ending January 5, 2008 pursuant to Iowa Code section 96.16-4. The claimant reviewed the revised audit (Department Exhibit One) with Investigator Finley, and he chose not to be available for the re-scheduled hearing. Misrepresentation is the failure to report work and wages for five weeks.

DECISION:

The decision of the representative dated September 5, 2008, reference 04, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$678 due to misrepresentation.

rls