

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

Appeal Number: 06-IWDUI-132
OC: 08/21/05
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 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.

PAMELA S MURPHY
3720 SECOND AVENUE
COUNCIL BLUFFS IA 51501

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)

June 30, 2006

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal
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 May 22, 2006, reference 04, which held that the claimant was overpaid unemployment benefits in the amount of \$676.00, because she incorrectly reported or failed to report wages earned with AAA Nebraska for the 3-week period from April 2, 2006 to April 22, 2006.

After due notice was issued, a hearing was scheduled for a telephone conference call on June 22,

2006. The claimant did not participate. John Doidge, Investigator, participated for Iowa Workforce Development, Investigation and Recovery. Department Exhibit One was received as evidence.

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 August 21, 2005. The claimant claimed for and received unemployment benefits during the third and fourth quarters of 2005, as well as the first quarter of 2006.

The department issued decisions that the claimant was overpaid benefits \$2,379, and \$783 for the period from October 9, 2005 to December 17, 2005, and from December 18, 2005 to January 7, 2006. The claimant did not appeal these decisions.

The department audited the claimant's unemployment claim for the first quarter of 2006, and AAA Nebraska (her employer), reported to the department the gross earnings paid to the claimant. The employer stated that the claimant worked for it from October 10, 2005 to March 31, 2006. The employer further reported the claimant received severance pay of \$1,080 upon separation from employment.

The department concluded the claimant was overpaid benefits \$676 for the three-week period ending April 22, 2006. The claimant failed to report her severance pay from her employer after she left work on March 31, 2006. Investigator Doidge noted according to department records that the claimant's average weekly wage was \$463, which he divided into the severance pay that he applied to the claimant's post separation from employment period for three-weeks.

Investigator Doidge mailed a notice to the claimant dated May 9, 2006 that requested she report to the Council Bluffs Workforce Center for an interview on May 15. The claimant did not report, and she did not respond to the interview.

Doidge noted that the claimant failed to report her severance pay that should have been applied to the three-week period after her separation from employment that is considered misrepresentation by the department.

The department re-mailed an overpayment decision that is dated one-day (May 23) after the original mailing date of May 22. The claimant postmarked her appeal envelope on June 3, 2006 that is after the deadline date stated on the decision to file a timely appeal (June 1).

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal is timely.

Iowa Code Section 96.6-2 provides:

2. Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the

decision.

The administrative law judge concludes that the claimant affected a timely appeal from the May 22, 2006 decision, as a reasonable inference may be drawn that she was miss-lead by the re-mailing of an earlier overpayment decision that is dated the same day.

The further issue is whether the claimant is overpaid benefits \$676, 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 \$676 for the three-week period ending April 22, 2006 pursuant to Iowa Code section 96.16-4. The evidence establishes that the claimant misrepresented her unemployment claim by failing to report her severance pay. The claimant has failed to offer any evidence that the employer miss-reported her severance pay during the audit review or that the department erred in the calculation of the overpayment.

DECISION:

The decision of the representative dated May 22, 2006, reference 04, is AFFIRMED. The claimant is overpaid benefits \$676 due to misrepresentation.

rls