

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DEBBIE CUPPS  
1210 RIPLEY COURT  
MUSCATINE IA 52761

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

DAN ANDERSON, IWD

**Appeal Number:** 05-IWDUI-0979  
**OC:** 04/17/05  
**Claimant:** Appellant (4)

**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, 4<sup>th</sup> 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.

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.

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.

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(Administrative Law Judge)

JULY 29, 2005

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(Decision Dated & Mailed)

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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 June 29, 2005, reference 04, which held that the claimant was overpaid unemployment benefits in the amount of \$527.00, because of misrepresentation in failing to report wages earned with for the 3-week period ending May 14, 2005.

After due notice was issued, a hearing was held by telephone conference call on July 25, 2005. The

claimant participated. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Tom Carnahan. Department Exhibits One, Two and Three 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 April 17, 2005.

A new employer verification check audit was done on the claimant's claim for the second quarter of 2005. A representative of Letica Corporation reported to the department the hours worked and the wages earned by the claimant during a review period from the week ending April 30, 2005 to the week ending May 14, 2005. The department compared the employer's audit report against the claimant's unemployment claims for the same weeks.

The claimant did not report any wages for the 2-weeks ending May 7, and she reported \$142 for the week ending May 14th. The employer reported wages of \$348, \$161, and \$323 for the 3-weeks at issue. The department determined the claimant should not have received any of the \$254 benefit for the week ending April 30, and none of the \$175 benefit for the week ending May 14. The claimant should have received a reduced benefit of \$98 (\$254-\$156) for the week ending May 7.

Investigator Carnahan mailed a notice with the audit documentation to the claimant on May 25, 2005 regarding the \$527 overpayment.

The claimant did not report or correctly report her wages based on belief that she need not due so until she received a paycheck, as her employer withheld her pay after starting work on April 26. Investigator Carnahan advised that the claimant did not intentionally misrepresent her claim.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$527, 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 \$527 for the 3-weeks ending May 14, 2005 pursuant to Iowa Code section 96.3-7. The claimant made a good faith err by reporting her wages when received rather than earned. The claimant did not dispute the amount of wages reported by her employer or the department's calculation of the overpayment.

**DECISION:**

The decision of the representative dated June 29, 2005, reference 04, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$527, but it is NOT due to misrepresentation.

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