

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 09-IWDUI-168
OC: 06/22/2008
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

CYNTHIA PURDY
P.O. BOX 36
FREMONT, IA 52561-0036

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

DAN ANDERSON, IWD

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.

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.

(Administrative Law Judge)

August 28, 2009
(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Cynthia Purdy filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated July 20, 2009. In this decision, the Department determined that Ms. Purdy was overpaid \$506 in unemployment insurance benefits for seven weeks between September 28, 2008 and November 15, 2008. The decision states that the overpayment was a result of the appellant incorrectly reporting wages from Wildlife Bar and Grill.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 10, 2009 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on August 11, 2009. On August 27, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Karen Von Behren represented the Department and presented testimony. The Department submitted Exhibits A (pages 1 through 13) and B, which were admitted into the record as evidence. The appellant did not appear.

ISSUES

Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits.

Whether IWD correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

FINDINGS OF FACT

Cynthia Purdy filed a claim for unemployment benefits with an effective date of June 22, 2008. Ms. Purdy made claims for and received unemployment benefits during the fourth quarter of 2008.

The Department conducted a routine audit of Ms. Purdy's unemployment claim for the fourth quarter of 2008. Wildlife Bar and Grill reported that Ms. Purdy earned wages in the weeks ending October 4, 2008 through November 15, 2008. (Exh. A, p. 3). When making claims for those weeks, Ms. Purdy also reported having earned wages. The amounts reported by Ms. Purdy and Wildlife Bar and Grill differed. Ms. Purdy's weekly benefit amount during this time period was \$359.

The following chart sets out the amounts reported by Ms. Purdy and Wildlife Bar and Grill, as well as the amount of benefits Ms. Purdy received each week and the amount of benefits the Department believes Ms. Purdy should have received if her wages were as reported by the employer.

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employer</i>	<i>Benefits rec'd</i>	<i>Benefits entitled</i>
10/4	\$159	\$186	\$289	\$262
10/11	\$70	\$168	\$359	\$280
10/18	\$90	\$195	\$358	\$253
10/25	\$100	\$204	\$348	\$244
11/1	\$80	\$132	\$359	\$316
11/8	\$100	\$204	\$348	\$244
11/15	\$100	\$144	\$348	\$304

Based on the foregoing, the Department determined that Ms. Purdy was overpaid unemployment benefits in the amount of \$506.

After determining that a discrepancy existed between the amounts reported by Ms.

Purdy and her employer, the Department sent Ms. Purdy a preliminary audit notice on July 6, 2009. That notice advised her of the discrepancy and gave her an opportunity to respond. Ms. Purdy did not respond to the Department's preliminary audit notice.

On July 20, 2009, the Department issued a decision to Ms. Purdy notifying her that she was overpaid by \$506 as a result of misrepresentation.

The Department had previously calculated an overpayment for Ms. Purdy for the weeks in question, but upon review of the records submitted by Wildlife Bar and Grill it was determined that the records were erroneous. That overpayment was ultimately voided and the Department sought and received accurate wage information from Wildlife Bar and Grill for the weeks in question. The second round of wage information is what the Department used to calculate the overpayment on appeal here. Ms. Purdy was issued a preliminary audit notice after the Department's first audit and did not respond to that notice either.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.¹ If a claimant is overpaid benefits as a result of misrepresentation, IWD may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant's real or personal property and rights to property.²

A. Overpayment

There was credible evidence presented by the Department from Ms. Purdy's employer that Ms. Purdy earned more during the weeks in question than she reported. Ms. Purdy did not contact the Department in response to the preliminary audit notice to explain the discrepancy, nor did she appear at the hearing to present any testimony that would shed light on the discrepancy or her reasons for underreporting her wages. I accept as credible the evidence the Department presented regarding Ms. Purdy's wages during the weeks in question.

An individual who is partially unemployed may receive unemployment insurance benefits if she is working less than her normal full-time week for an employer and is earning less than her weekly benefit amount plus fifteen dollars.³ Ms. Purdy, then, could have earned up to \$374 in a week and still received some amount of unemployment benefits. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant's

¹ Iowa Code § 96.3(7)(a) (2009).

² 871 Iowa Administrative Code (IAC) 96.16(4).

³ Iowa Code § 96.19(38)(b)(1) (2009).

wages in the week that exceed 25% of the weekly benefit amount.⁴

Applying the formula above, the Department correctly calculated Ms. Purdy's overpayment at \$506.

B. Misrepresentation

The Department considered a number of factors in concluding that the overpayment in question was the result of misrepresentation on the part of Ms. Purdy. The Department considered the fact that the discrepancy between wages reported and wages actually earned was quite large in at least four of the weeks in question. Additionally, the Department considered Ms. Purdy's failure to respond to either the first or second preliminary audit notice that was sent regarding the wage discrepancy. Ms. Purdy did not appear at the hearing and there is no plausible alternate explanation in the record for the repeated underreporting of wages. On this basis, the Department's finding regarding misrepresentation must be affirmed.

DECISION

Iowa Workforce Development's decision dated July 20, 2009, reference 5, is **AFFIRMED**. The claimant has been overpaid benefits in the amount of \$506 due to misrepresentation.

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