

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

Appeal Number: 10-IWDUI-232
OC: 01/04/09
Claimant: Appellant (1)

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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JAMES L. BROCKETT
1525 – 27TH AVENUE S
CLINTON, IA 52732

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50319

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)

August 30, 2010

(Decision Dated & Mailed)

Iowa Code Section 96.6-2 – Timeliness of Appeal
Iowa Code Section 96.16-4 - Misrepresentation
Iowa Code Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE

Claimant James L. Brockett filed an appeal from an Iowa Workforce Development decision dated April 7, 2010, reference 02, which held he had been overpaid unemployment benefits in the amount of \$1440, because he failed to properly report wages earned with RAAF Properties from April 26, 2009 through June 13, 2009. The decision further held that the overpayment was due to misrepresentation on Brockett's part.

A hearing was scheduled by way of telephone conference call on August 30, 2010. IWD Investigator John Doidge appeared and participated on behalf of IWD. The documents in the administrative file were marked as Exhibit A, pp. 1-6 and were admitted into evidence. James Brockett failed to appear. The hearing was held in his absence.

FINDINGS OF FACT

James L. Brockett filed a claim for unemployment benefits with an effective date of January 4, 2009. Brockett made claim for and received unemployment benefits during the second quarter of 2009.

The department audited Brockett's unemployment claim and RAF Properties, LLC reported to the department gross earnings paid to Brockett during the period from second quarter of 2009. The department compared the employers' wage reports against Brockett's claims for the same weeks.

That comparison showed:

| Week Ending | Wages Reported by RAF | Wages Reported by Brockett |
|--------------------|----------------------------------|---------------------------------------|
| 05/02/09 | \$ 92 | \$ -0- |
| 05/09/09 | 277 | -0- |
| 05/16/09 | 462 | -0- |
| 05/23/09 | 462 | 198 |
| 05/30/09 | 462 | 350 |
| 06/06/09 | 462 | 350 |
| 06/13/09 | 462 | 300 |

Cox also received \$25 each week of the seven in question in federal economic stimulus benefits.

The department next compared the amount of benefits Brockett received each week with the amount he would have received had he reported the wage information supplied by his employer. That comparison was as follows:

| Week ending | Benefits Paid | Benefits Entitled To | Overpayment |
|--------------------|----------------------|-----------------------------|--------------------|
| 05/02/09 | \$389 | \$389 | \$-0- |
| 05/09/09 | 389 | 209 | 180 |
| 05/16/09 | 389 | -0- | 389 |
| 05/23/09 | 288 | -0- | 288 |
| 05/30/09 | 136 | -0- | 136 |
| 06/06/09 | 136 | -0- | 136 |
| 06/13/09 | 186 | -0- | 186 |
| | | TOTAL | \$1315 |

Additionally, stimulus benefits are not available to an individual unless he or she is entitled to at least 1\$ in unemployment benefits during a given week. Therefore, given the information provided by RAF, Brockett should not have received the \$25 in any of the five weeks May 16, 2009 through June 13, 2009, resulting in an additional overpayment of \$125.

After reviewing the documentation the department determined Brockett was overpaid a in the total amount of \$1440.

IWD Investigator Tom Carnahan mailed a notice to Brockett on January 25, 2010 notifying him of the audit and potential overpayment and offering him an opportunity to present evidence to rebut by February 3, 2010. Carnahan noted that he received no response from Brockett within the deadline.

Under these circumstances, the department issued its April 7, 2010 decision holding that Brockett was overpaid benefits in the amount of \$1440. The department cited Iowa Code section 96.16-4 as the basis for its decision, indicating that misrepresentation was involved. The decision contained the following language:

TO APPEAL THIS DECISION:
THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS
POSTMARKED BY 04/17/10, OR RECEIVED BY IOWA WORKFORCE
DEVELOPMENT APPEAL SECTION BY THAT DATE. IF THIS DATE
FALLS ON A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, THE
APPEAL PERIOD IS EXTENDED TO THE NEXT WORKING DAY.

Brockett filed an appeal which he dated July 20, 2010. The Appeals Section date-stamped the document July 19, 2010.

The department certified two issues for appeal: Whether Brockett received an overpayment of benefits and whether the overpayment was due to misrepresentation on Brockett's part. IWD did not certify any issue with regard to timeliness of Brockett's appeal.

CONCLUSIONS OF LAW

Timeliness of Appeal:

Iowa law provides that, unless a claimant files an appeal within ten calendar days after notification of a decision was mailed to him or her, the department's decision regarding the payment of unemployment benefits shall become final.¹

¹ Iowa Code section 96.6-2.

The record in this case shows that far more than ten calendar days elapsed between the mailing date of each decision and the date this appeal was filed. Brockett dated the appeal July 20, 2010. The Appeals Section date-stamped the document on July 19, 2010. The Iowa Supreme Court has declared the requirement of filing appeals within the time allotted by statute is jurisdictional.² Failure to file a timely appeal deprives the undersigned of authority over the original decision unless there is evidence the claimant was deprived of a reasonable opportunity to file the appeal on a timely basis.³

There is no evidence in this case suggesting that anything prevented Brockett from filing a timely appeal. It is likely the undersigned does not have jurisdiction over the appeal filed. However, IWD did not certify timeliness as an issue and, as a result, Brockett was not given notice that timeliness was at issue in this case. Therefore, I will address the merits of the case.

Overpayment and Misrepresentation::

The division of job service must recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.⁴ If any benefits were received due to misrepresentation, the department is entitled to file a lien in the amount of the overpayment in favor of the state against any property owned by the benefits recipient.⁵

The uncontested evidence in this case clearly demonstrates that Brockett was overpaid \$1315 in unemployment benefits and \$125 in federal stimulus payments resulting in a total overpayment of \$1440.

That leaves the question of whether the overpayment resulted in misrepresentation on Brockett's part.

The evidence shows Brockett failed to report earning any wages at all for two weeks and he grossly underreported his wages during four weeks. Further, Brockett failed to respond to the audit notice. Finally, although Brockett claimed on his appeal form that he and his wife were paid together on the same check, there is no evidence to support that claim and it seems completely implausible. Therefore, it does not appear the overpayments in this case were the result of simple error on Brockett's part. Rather, the evidence reflects an effort to underreport earnings in order to receive more benefits than those to which Brockett was entitled. Under these circumstances, the representative's decision regarding misrepresentation must be affirmed.

² *Franklin v. Iowa Department of Job Service*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373, 377 (Iowa 1979), *Hendren v. Iowa Employment Security Council*, 217 N.W.2d 255 (Iowa 1974).

⁴ Iowa Code section 96.3(7).

⁵ Iowa Code section 96.16(4).

DECISION

The decision of the representative dated April 7, 2010, reference 02, is AFFIRMED. The claimant has been overpaid benefits in the amount of \$1440 due to misrepresentation.

kka