

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

Appeal Number: 08-IWDUI-134
OC: 11/04/07
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DONNA M GARWOOD
514 W 4TH STREET
MUSCATINE IA 52761-3124

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION 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)

October 29, 2008

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated September 17, 2008, reference 05, which held that the claimant was overpaid unemployment benefits in the amount of \$307.00, because she incorrectly reported her wages earned with DBL-DEE Inc. during a period from December 30, 2007 to April 5, 2008.

After due notice was issued, a hearing was held by telephone conference call on October 28, 2008. The claimant participated. Iowa Workforce Development, Investigation and Recovery, participated by Tom Carnahan, Investigator. Claimant Exhibit A and Department Exhibits 1, 2 and 3 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 that: The claimant filed a claim for unemployment benefits with an effective date of November 4, 2007. The department audited the claimant's claim for the first quarter of 2008, and an employer representative (DBL-DEE Inc./Twin Oaks) reported the hours worked and the wages earned by the claimant during the audit period.

The department compared the employer's wage report against the claimant's claim for the same weeks, and it concluded she had \$556 of overpayment, \$249 of under-payment, for a net overpayment of \$307. Investigator Carnahan mailed a notice to the claimant with the audit documentation about the overpayment on August 13, 2008.

After the claimant's appeal, she provided documentation with an explanation that she would report her wages as received in the week claimed, rather than the week earned. Investigator Carnahan explained in the hearing that wages are to be reported in the week earned, not when the pay is received. Carnahan believes the claimant made a good faith effort to correctly report her wages.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$307.00.

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 \$307.00 for the seven-week period ending April 5, 2008 pursuant to Iowa Code Section 96.3-7. Once the claimant understood that wages are to be reported in the week earned, not received, she had no disagreement with the overpayment.

DECISION:

The decision of the representative dated September 17, 2008, reference 05, is AFFIRMED. The claimant is overpaid benefits \$307.00.

rls