

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

Appeal Number: 07-IWDUI-167
OC: 09/24/06
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

ORA L TIGNER
215 SW MCKINLEY AVENUE
DES MOINES IA 50315-3043

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)

December 21, 2007

(Decision Dated & Mailed)

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 November 16, 2007, reference 08, which held that the claimant was overpaid unemployment benefits in the amount of \$1,412.00, because she failed to report wages earned with Sudzee Storage LLC for the period from May 27, 2007 to July 14, 2007.

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

17, 2007. The claimant did not participate. No one participated for Iowa Workforce Development, Investigation and Recovery.

FINDINGS OF FACT:

The administrative law judge, having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of September 24, 2006. The claimant claimed for and received unemployment benefits during the second quarter of 2006.

The department audited the claimant's unemployment claim for the second quarter of 2006, and a Sudzee Storage representative reported to the department the hours worked and gross earnings paid to the claimant during the period from May 20, 2007 to July 14, 2007. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department concluded its review with a Cross Match Audit Worksheet for Report Wages dated October 29, 2007. The Worksheet review shows the claimant has an overpayment of \$1,412 that involves six weeks. Five of the six weeks, the claimant reported no work and wages though she was paid anywhere from \$288 to \$360 by Sudzee Storage.

The department record shows that Investigator Lewis mailed the claimant a notice dated November 1, 2007 advising her of the \$1,412 overpayment, but she did not respond by November 13.

The claimant filed an appeal stating she thought she could claim unemployment due to accepting a lesser, hourly paying job. The claimant did not submit any pay information to refute what her employer reported.

The claimant did not respond to the hearing notice prior to the hearing. The claimant called the day after the hearing, as she failed to read and follow the hearing notice instructions. The department investigator was not available when called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$1,412, 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 \$1,412 for the 6-weeks ending July 14, 2007 pursuant to Iowa Code section 96.16-4. The department record is based on the claimant's employer (Sudzee) reporting that she had substantial earnings during a period that claimed for unemployment and reported no wages. While the claimant may have received department advice that she could file claims due to receiving lesser wages, it is not believable that she would be told not to report her wages when the department asks her to do so when claiming for unemployment. Misrepresentation is the knowing failure to provide wage information when requested to do so.

DECISION:

The decision of the representative dated November 16, 2007, reference 08, is AFFIRMED. The claimant is overpaid benefits \$1,412 due to misrepresentation.

rls