

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

Appeal Number: 04-IWDUI-130
OC: 07/13/03
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.**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

JOSHUA R PUFFINBARGER
1009 LAKE BEND ROAD
IOWA CITY IA 52246

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
INVESTIGATIONS 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)

August 27, 2004

(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 July 12, 2004, reference 01, which held that the claimant was overpaid unemployment benefits in the net amount of \$900.25, because of misrepresentation in failing to report wages or incorrectly reporting wages earned with the University of Iowa for the 4-weeks ending November 8, 2003.

After due notice was issued, a hearing was held by telephone conference call on August 23, 2004.

The claimant did not participate. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Neil Anderson.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of July 13, 2003.

A wage cross-match audit was done on the claimant's claim for the fourth quarter of 2003. A representative of the University of Iowa responded to the audit by reporting the wages earned by the claimant during a period from September 28, 2003 to November 8, 2003. The department compared the employer's report of wages for the claimant against his benefit payment record for the same weeks.

Investigator von Anderson concluded the claimant was overpaid benefits of \$900.25 for the 4-weeks ending November 8, 2003. The employer reported it paid the claimant wages of \$266, \$477, \$476 and \$450 for the weeks ending October 18, October 25, November 1, and November 8, 2003. The claimant reported no wages for the 4-weeks and he received benefits of \$288, \$288, \$288 and \$130.25. Based on the employer's report of wages, the claimant was not entitled to any benefit for the 3-weeks ending November 8 due to earning excessive wages, and a partial benefit of \$94 for the week ending October 18, 2003.

Investigator Anderson mailed a notice to the claimant regarding the \$900.25 overpayment on June 17, 2004. The Investigator concluded the claimant misrepresented his claim by failing to report his wages when he answered no to the question whether he worked the 4-weeks at issue.

When the claimant appealed, he raised an issue about claiming for back-benefits. The department resolved the issue by allowing the claimant to claim for and received unemployment benefits for the 4-weeks ending March 20, 2004. The benefit entitlement was offset against the \$900.25 overpayment that was satisfied in this manner.

The claimant called in response to the hearing notice with a number to be called for the hearing. Approximately two hours prior to the scheduled hearing, the claimant called and left a message to reschedule without providing any reason for it. The ALJ responded to the message by calling for the claimant at the number he provided. The claimant was not available, and the ALJ advised him that he needed to call prior to the hearing at 2:30 pm. , and explain why he was requesting the hearing to be re-scheduled. The claimant called at 2:46 pm., and left a message that he had not been available due to car trouble, but that he could now be called for the hearing. The ALJ called for the claimant, but the answering system would not allow any message to be left.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the hearing should have been rescheduled.

The administrative law judge concludes the claimant failed to establish any good cause to reschedule the hearing pursuant to 871 IAC 26.8(2). The claimant had the burden to establish an "extreme emergency" to justify the rescheduling of the hearing, as his request was made about two hours prior to the scheduled time. The claimant was advised by a message that he needed to provide a reason for the rescheduling request, and he did not call until 2:46 after the record had

been closed, offering a car problem as the reason. If the claimant can offer documentation that he had an extreme emergency, then he may request a rehearing upon receiving this decision.

The further issue is whether the claimant is overpaid benefits \$900.25, and if so, whether it is due to 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 \$900.25 for the 4-weeks ending November 8, 2004 pursuant to Iowa Code section 96.16-4. The claimant misrepresented his claim by answering no to the question whether he worked for each of the four weeks at issue. The claimant did not offer any information in his appeal letter that he contested the amount of wages reported by his employer and/or that the department miscalculated the overpayment.

The department responded to the benefit backdating request by allowing unemployment for the 4-weeks ending March 20, 2003, and the benefits were used to offset and repay the \$900.25 overpayment that is satisfied.

DECISION:

The decision of the representative dated July 12, 2004, reference 01, is AFFIRMED. The claimant is

overpaid benefits \$900.25 due to misrepresentation. The overpayment has been repaid by offset procedure.

rls