

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

Appeal Number: 08-IWDUI-014
OC: 07/01/07
Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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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)

February 22, 2008

(Decision Dated & Mailed)

Section 96.19-41 – Definition of Wages
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 28, 2007, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$2,189.00, because he failed to report wages earned with Holtz Service for the 7-week period from September 23, 2007 to November 10, 2007.

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

18, 2008. The claimant participated. Karen von Behren, Investigator, participated for Iowa Workforce Development, Investigation and Recovery. Richard Hanson, Attorney, participated for Baxter Cycle.
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: The claimant filed a claim for unemployment benefits with an effective date of July 1, 2007. The claimant had last worked for Baxter Cycle as a motorcycle repairman.

The department received a complaint that the claimant was working for Holtz Service while receiving unemployment, and it assigned Investigator John Doidge to check into this matter. Doidge submitted an Employer Recheck of Wage Records form to Holtz Service. Office Manager Connie Klein recorded that the claimant began work on September 25, 2007, and she listed the weekly hours worked, as well as the gross wages earned by him during a period ending November 10, 2007.

Doidge compared the wage information against the claimant's unemployment claims for the same, seven weeks. The claimant reported no work or wages earned, and he received a benefit of \$373 for each week. Based on the Holtz Service wage report, the claimant was entitled to a limited benefit of \$136 the week ending September 29, \$186 the week ending November 3, and no benefit for the other four weeks, for a total overpayment of \$2,189.00.

Since the audit was prepared in two phases, Doidge mailed notices to the claimant on October 24, and November 15, 2007 regarding the \$2,189 overpayment. The claimant failed to respond, and the department issued the decision.

The claimant believes that he performed work as an "independent consultant" for Holtz. Holtz confirmed with a department representative that earnings from self-employment are not deductible from benefits, and this is why he did not report the earnings. The claimant did motorcycle repair work at the Holtz shop, and he was paid an hourly rate (\$10 initially, then \$15) on a weekly basis. After working a month or so, the claimant did have the owner, Keith Holtz, sign an agreement that he worked as a consultant for the business.

Investigator von Behren checked department records that show Holtz Service reported the wages paid to the claimant as taxable wages in the amount of \$7,025. The claimant acknowledged that he did later become an employee of Holtz Service after he worked a trial period as a consultant.

REASONING AND CONCLUSIONS OF LAW:

The primary issue is whether the claimant is overpaid benefits \$2,189.00 and if so whether it is the result of misrepresentation.

An issue raised by the claimant is whether the compensation he earned is taxable wages.

Iowa Code Section 96.19-41 provides:

41. "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the department. Wages payable to an individual for insured work performed prior to January 1, 1941, shall, for the purposes of sections 96.3, 96.4, and this section, be deemed to be wages

paid within the calendar quarter with respect to which such wages were payable.

The administrative law judge concludes that the claimant earned wages for insured work as an employee of Holtz Service during the seven weeks he claimed for and received unemployment benefits pursuant to the law section cited above. A Holtz representative reported the claimant's earnings as "wages" in response to the department audit, and Holtz reported the earnings as taxable wages when it filed a report to the department. The claimant admitted that the agreement he now offers as evidence of a consultant-contract relationship was obtained well after he started work. In addition, the claimant was paid an hourly rate for work he performed at Holtz Service for their customers rather than him having his own home business. The claimant admitted that he did become an employee that is consistent with the type of relationship he had at the outset.

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 \$2,189.00 for the 7-week period ending November 10, 2007 pursuant to Iowa Code section 96.3-7. While the claimant is overpaid benefits, he may have had a mistaken belief that his earnings were the result of a type of self-employment that is not misrepresentation (fraud). The claimant acknowledged that Holtz properly reported his earnings, and he did not disagree with the overpayment calculation.

DECISION:

The decision of the representative dated November 28, 2008, reference 03, is AFFIRMED. The claimant earned wages for Holtz Service, and he is overpaid benefits \$2,189, but it is NOT due to misrepresentation.

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