

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

Appeal Number: 06-IWDUI-148
OC: 10/23/05
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DORINDA S SORENSEN
604 THIRD STREET
FONTANELLE IA 50846

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)

July 20, 2006

(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 June 16, 2006, reference 01, which held that the claimant was overpaid unemployment benefits in the amount of \$453.00, because she failed to report or incorrectly reported her wages from Farley's & Sathers Candy Co. Inc. for 5-weeks during a period from October 23, 2005 to December 31, 2005.

After due notice was issued, a hearing was held by telephone conference call on July 17, 2006. The

claimant did not participate. Iowa Workforce Development, investigation and Recovery, participated by John Doidge, Investigator.

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 that: The claimant filed a claim for unemployment benefits with an effective date of October 23, 2005. The department audited the claimant's claim for the fourth quarter of 2005, and two employers, Wrigley Manufacturing and Farley's & Sathers Candy Co. Inc. responded to the audit.

Wrigley Manufacturing sold its business to Farley's effective December 2005, so Farley's reported the claimant's earnings for the period from the week ending October 29, 2005 to December 31, 2005. The department compared the earnings report against the claimant's claim for the same weeks. Investigator Doidge learned that the Tax Bureau determined Farley's to be a successor of Wrigley's Manufacturing with respect to the taxable wages reported to the department and liability for the payroll account.

Farley's reported wages of \$348 for the week ending October 29 while the claimant reported \$189. Based on the employer's report the claimant was not entitled to the \$96 benefit she received. Farley's reported vacation pay of \$98 for the week ending November 5 while the claimant reported nothing and she received a benefit of \$228. Based on the employer's report, the claimant was entitled to \$130 that created an overpayment of \$98. Farley's reported wages of \$246 for the week ending November 19 while the claimant reported \$186. Based on the employer's report the claimant was not entitled to the \$99 benefit she received. Farley's reported holiday pay of \$98 for the week ending December 24 while the claimant reported nothing and she received a benefit of \$228. Based on the employer's report, the claimant should have received a benefit of \$187 that created an overpayment of \$41. Farley's reported holiday pay of \$196 for the week ending December 31 while the claimant reported \$77, and she received a benefit of \$208. Based on the employer's report, the claimant should have received a benefit of \$89 that created an overpayment of \$119.

Investigator Doidge mailed a notice to the claimant dated May 23, 2006 regarding the department audit and \$453 overpayment, and he included the employer wage report. The claimant did not respond, and the department issued the decision.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$453.00.

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 \$453.00 for the 5-week period ending December 31, 2005 pursuant to Iowa Code Section 96.3-7. Most of the overpayment is due to the failure of the claimant to report vacation pay and holiday pay that is deductible when determining unemployment benefits. Since Wrigley sold its business to Farley's and the Tax Bureau determined the latter business to be a successor, it was responsible for reporting the 2005, fourth quarter wages for all employees that included the claimant.

DECISION:

The decision of the representative dated June 16, 2006, reference 01, is AFFIRMED. The claimant is overpaid benefits \$453.00.

rls