

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

Appeal Number: 06-IWDUI-159
OC: 10/02/05
Claimant: Appellant (4)

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

SHARON K. BARTELS
15837 BUDD ROAD
DUBUQUE IA 52002

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.

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

DAN ANDERSON, IWD

(Administrative Law Judge)

July 28, 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 27, 2006, reference 01, which held that the claimant was overpaid unemployment benefits in the amount of \$278.00, because she incorrectly reported her wages earned with Dubuque Rheumatology for 4-weeks during the period from November 6, 2005 to December 31, 2005.

After due notice was issued, a hearing was held by telephone conference call on July 24, 2006. The

claimant, and her witness, Nancy Troester, CPA/Supervisor for McGladrey, Inc., participated. Iowa Workforce Development, investigation and Recovery, did not participate.

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 October 2, 2005. The department audited her claim for the fourth quarter of 2005. Dubuque Rheumatology representative, CPA Troester, reported the gross wages earned by the claimant for the weeks ending November 5, 2005 to December 31, 2005. Since the claimant was paid bi-weekly, Troester divided the hours worked for each of the two-weeks she earned wages.

The department compared the employer's wage report against the claimant's claims each week, and it determined she had an overpayment totaling \$278, as follows, to wit: week ending November 12 - \$99; week ending December 3 - \$10; week ending December 24 - \$10; and week ending December 31 - \$159. Investigator Carnahan mailed a notice to the claimant regarding the \$278 overpayment, and she responded with a fax communication dated May 25 that contained corrected wage information. However, the department disregarded the corrected information, and it issued the decision.

The claimant began work on November 2, and the employer's wage report for the 2-weeks ending November 12 included hours worked for the week ending November 5. Troester was not able to provide a breakdown of wages for the 2-weeks. The wages reported for the 2-weeks ending December 10, and December 24, 2005, are substantially correct. Troester would either round up or down the breakdown of the hours allocated to each week. Troester verified the claimant's statement she did not work and earn any wages the week ending December 31, 2005.

Investigation and Recovery did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$278.00.

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 \$20.00 for the two weeks ending December 3, and December 24, 2005 pursuant to Iowa Code Section 96.3-7. The claimant did not have any significant disagreement with the employer's allocation of hours for the bi-weekly pay period, for each of the two-weeks at issue. Since the employer is not able to provide a breakdown of the hours/wages earned for the week ending November 5, and November 12, 2005, there is insufficient reliable information to substantiate any overpayment during this period. Since the claimant did not work the week ending December 31, 2005, there is no overpayment for this week.

DECISION:

The decision of the representative dated June 27, 2006, reference 01, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$20.00.

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