

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

Appeal Number: 06-IWDUI-184
OC: 11/13/05
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

**BULAKALI MUGANZA
2920 SHADOW CREEK LANE
DES MOINES IA 50320**

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)

September 29, 2006

(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 August 25, 2006, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$818.00, because he failed to report wages earned with Kelly Services Inc., for the period from January 1, 2006 to January 28, 2006.

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

September 21, 2006. The claimant did not participate. Irma Lewis, Investigator, participated for Iowa Workforce Development, Investigation and Recovery.

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 November 13, 2005. The claimant claimed for and received unemployment benefits during the quarter first of 2006.

The department audited the claimant's unemployment claim for the first quarter of 2006, and Kelly Services Inc reported to the department the gross earnings paid to the claimant during the period from January 1, 2006 to January 28, 2006. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department concluded the claimant had a gross overpayment of \$927 for the four-weeks ending January 28, 2006 that was reduced by a \$109 under-payment that resulted in a net overpayment of \$818. While claiming for unemployment benefits for the weeks ending January 7, January 14, January 21, and January 28, 2006, the claimant reported gross wages of \$180, \$220, \$215, and \$215. Kelly Services reported the claimant earned gross wages of \$435, \$366, \$526, and \$400 for the same weeks. The claimant was entitled to a reduced benefit (\$242-96) of \$146 for the week ending January 14, and no benefits for the other three-weeks (\$282, \$247, \$247) due to earning excessive wages.

Investigator Lewis mailed a notice with the audit documentation to the claimant on August 4, 2006 regarding the \$818 overpayment, but he failed to respond. Without any explanation for the overpayment, the department concluded the claimant significantly under-reported his wages in order to receive more benefits that is considered misrepresentation.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$818, 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 \$818 for the 4-weeks ending January 28, 2006 pursuant to Iowa Code section 96.16-4. The claimant has failed to participate in this hearing and offer any information to refute his employer's wage reports that have caused him to be overpaid benefits. The claimant's pattern of significantly under-reporting his wages absent any explanation is a knowing failure to disclose material facts that is considered misrepresentation.

DECISION:

The decision of the representative dated August 25, 2006, reference 03, is AFFIRMED. The claimant is overpaid benefits \$818 due to misrepresentation.

rls