

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

Appeal Number: 13IWDUI063
OC: 12/09/12
Claim Ref. # (01)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

CLINT TIBBEN
33651 DELTA CIRCLE
REDFIELD, IA 50233

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

JONI BENSON, IWD
IRMA LEWIS, 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.

Jean M. Davis

(Administrative Law Judge)

April 19, 2013

(Decision Dated & Mailed)

Sections 96.4-3/96.3-7 – Not Eligible/Recovery of Overpayments

Sections 96.5-8/96.16-4- Misrepresentation/Administrative Penalty

STATEMENT OF THE CASE

The Appellant Clint Tibben (hereinafter Appellant) filed an appeal from a decision dated January 10, 2013, reference 01, issued by the Respondent Iowa Workforce Development (hereinafter Respondent) which held that the Appellant was not eligible to receive unemployment insurance benefits based upon a determination that the Appellant had made false statements regarding his employment and earnings. That decision also held that the unreported income constituted

misrepresentation and imposed an administrative penalty upon the Appellant. The decision further referenced an overpayment on the Appellant's account.

The Appellant filed a timely appeal of the Department's adverse decision and requested a contested case hearing on the issues. This case was transmitted from Iowa Workforce Development to the Iowa Department of Inspections and Appeals for purposes of conducting the contested case hearing requested by the Appellant.

After due notice was issued, and one continuance in the case, a contested case hearing was held by telephone conference call on April 16, 2013 before Administrative Law Judge Jean M. Davis. The Appellant appeared for the hearing and was self-represented. The Appellant also testified in this case. The Respondent appeared for the hearing and was represented by Investigator Irma Lewis. Ms. Lewis testified at the hearing and also presented Exhibit A, which was received into evidence. Notice was also taken of the administrative file, which included the notice of decision issued by the Respondent and the Appellant's notice of appeal.

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 Appellant filed a claim for unemployment benefits with an original claim date of December 9, 2012. In a decision dated January 10, 2013, the Respondent Iowa Workforce Development determined that that Appellant was not entitled for benefits and disqualified from benefits until December 7, 2013. The decision and associated administrative penalty were based upon determination that the Appellant claimed and received unemployment compensation during a period of time in which we was working and received earned income. The specific period of time that the Respondent claimed that the Appellant was working while claiming benefits was January 8, 2012 through April 21, 2012. The Respondent also concluded that the Appellant engaged in misrepresentation and made false statements regarding work activity during this period.

As a condition of eligibility, a person receiving unemployment compensation benefits is required to engage in a work search and must also be able and available for work. In addition, the benefit recipient must file work search and work activity reports with the Respondent and is required to report to the Respondent any wages earned during a period for which benefits are also claimed. During the relevant time period, the Respondent received a cross match report indicating that the Appellant was working while claiming benefits. As such, and as a part of federal Department of Labor requirements, the Respondent triggered an audit of the Appellant's claim for unemployment compensation benefits and began reviewing the earned income reported by the Claimant. The Department's audit was conducted by Ms. Lewis. The audit specifically reviewed the Appellant's earned income for the relevant time period.

As a part of the audit, Ms. Lewis requested and received reports of income paid to the Appellant by the Fligg Corporation. Ms. Lewis compared the employer's reports of wages paid to the Appellant with the information provided by the Appellant for the same time period. Ms. Lewis also determined that the Appellant failed to report any of the earned income she received. As a part of her investigation, Ms. Lewis also sent the Appellant a preliminary notice of audit findings giving him the opportunity to dispute the information obtained during the preliminary audit. The Appellant failed to respond the preliminary audit notice sent by Ms. Lewis. A notice of overpayment was sent to the Appellant on September 13, 2012 informing the Appellant that he had been overpaid benefits during the January 8, 2012 through April 21, 2012 time period due to the fact that he also received wages during the same period. The Appellant did not appeal that notice and Ms. Lewis continued with her

investigation.

As a part of the audit conducted, Ms. Lewis determined that the Appellant failed to report the wages he received from the Fligg Corporation. In addition, Ms. Lewis determined that the Appellant filed his weekly benefit reports for relevant time period declaring that she did not have earned income for those weeks for which benefits were claimed. The Respondent also determined that the overpayment must be repaid before any further unemployment insurance compensation benefits would be paid to the Appellant and that the recovery of the overpayment may be subject to legal process.

At the hearing, the Appellant did not dispute that he worked for the Fligg Corporation during the relevant period of time. The Appellant stated that he was confused about the time period of his work activity and when he was supposed to report his wages to the Respondent. The Respondent argued that the Appellant has been a benefit recipient on numerous occasions in the past and that the report requirements had been explained to the Appellant on numerous occasions.

REASONING AND CONCLUSIONS OF LAW:

The issues in this case are whether the Appellant's overpayment of benefits arose due to misrepresentation by the Appellant and whether the Appellant should be subjected to an administrative penalty.

Iowa Code section 96.3(7)(a) provides:

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.

Iowa Code section 96.3(7)(b)(1) further provides that 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.

Iowa Code section 96.16(4) provides:

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.

Based upon the evidence of record, and pursuant to the authority cited above, the Administrative Law Judge concludes that the Respondent correctly concluded that the Appellant was overpaid as the result of acts constituting misrepresentation by the Appellant. The evidence of record establishes that the Appellant worked for Fligg Corporation during the time period for which the audit was conducted but failed to report his earnings as required. Indeed, the Appellant filed his weekly benefits reports denying that he had any earned income. The Appellant had an obligation to correctly report his income. The Department correctly determined that the Claimant was overpaid, correctly determined that the overpayment resulted from the Appellant's misrepresentations concerning his earned income, and correctly imposed an administrative penalty in this case.

DECISION:

The decision of the representative dated January 10, 2013 is **AFFIRMED**.