

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 09-IWDUI-234
OC: 12/28/08
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**.

HERBERT MILLER
212 S. 4TH STREET
MILO, IA 50166-1029

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

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

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.

Dan Anderson, IWD

(Administrative Law Judge)

December 23, 2009

(Decision Dated & Mailed)

Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE

Claimant Herbert Miller filed an appeal from an Iowa Workforce Development Department decision dated November 12, 2009, reference 05, which held he had been overpaid unemployment benefits in the amount of \$1,105 based on a failure to correctly report wages earned with McCoy Sanitation Corporation.

Hearing was scheduled for December 16, 2009. At the time of hearing, Claimant Miller appeared and participated on his own behalf. No one appeared on behalf of Workforce Development. The documents in the administrative file numbered 1-7 were admitted into evidence. At the close of the hearing, the record was left open for Miller to submit evidence as to his wages with McCoy Sanitation. Subsequently, Miller submitted a copy of a single pay stub for the pay period 3/21/09 through 3/27/09. That document was marked Exhibit A and is a part of the record.

FINDINGS OF FACT

Herbert Miller filed a claim for unemployment benefits with an effective date of December 28, 2008. Miller made claim for and received benefits during the first quarter of 2009.

The department audited Miller's unemployment claim for the first quarter of 2009, and McCoy Sanitation Corporation reported to the department gross earnings paid to Mr. Miller during the period from January 25, 2009 to March 27, 2009. The department compared the employers' wage reports against Mr. Miller's claims for the same weeks.

McCoy Sanitation reported Mr. Miller earned the following wages:

Week Ending	Wages
01/31/09	\$267.00
02/07/09	429.00
02/14/09	430.00
02/21/09	401.00
02/28/09	437.00
03/07/09	431.00
03/14/07	425.00
03/21/09	373.00
03/28/09	462.00 ¹

¹ The form filled out by McCoy Sanitation originally showed \$563 in wages for the week ending March 28,

During the same period, Miller reported the following wages to Workforce Development:

Week Ending	Wages
01/31/09	\$260.00
02/07/09	378.00
02/14/09	355.00
02/21/09	355.00
02/28/09	380.00
03/07/09	348.00
03/14/07	370.00
03/21/09	-----
03/28/09	-----

The department then compared the benefits paid to Miller based on the wages he reported as compared to the benefits he would have received based on the wages reported by McCoy Sanitation:

Week Ending	Benefits Paid	Benefits Entitled
01/31/09	\$293	\$286
02/07/09	175	124
02/14/09	198	123
02/21/09	198	152
02/28/09	173	116
03/07/09	205	122
03/14/07	183	128
03/21/09	443	180
03/28/09	443 + 25 stimulus payment	0

Therefore, the department determined Miller received an overpayment of benefits as follows:

Week Ending	Overpayment
01/31/09	\$ 7
02/07/09	51
02/14/09	75
02/21/09	46

2009. That figure is crossed out and the figure \$364 is written in and crossed out. Finally, the figure \$462 is written in with a note that indicates Miller received two paychecks on March 27, 2009, one for 8 hours and a second for 34.46 hours plus a reimbursement for health care. It appears from the Crossmatch Audit Worksheet prepared by Workforce Development that the agency used the \$462 figure in its calculations.

02/28/09	57
03/07/09	83
03/14/07	55
03/21/09	263
03/28/09	443 + 25 stimulus payment

Total **\$1105**

Investigator Mary Piagentini mailed a notice to Miller on September 23, 2009 notifying him of the audit and offering him an opportunity to provide proof of his earnings by October 5, 2009. Miller spoke with Piagentini on September 25, 2009 and expressed his disagreement with the figures reported by McCoy sanitation. Miller requested that Piagentini call the employer to verify the figures submitted. Piagentini did so and Miller still disagreed. He asked for time to submit paystubs. Piagentini gave him until October 5, 2009 to submit paystubs.

According to Miller's testimony at trial, he and his family were subject to last year's flooding and were forced to relocate. He was unable to find paystubs.

On November 12, 2009, Workforce Development issued its decision holding Miller had been overpaid benefits in the amount of \$1,105.

Miller testified that he did find one paystub and gave it to Workforce Development. The record is unclear whether he provided the paystub before or after Workforce Development issued its decision.

At hearing, Miller argued that the figures supplied by McCoy Sanitation are incorrect. He stated he returned to work with McCoy on January 26, 2009 and continued to work until March 26, 2009. Miller asserted that the person who filled out the Wages Cross Match sheet for the employer has now left the company under a cloud of suspicion. He points out that the document filled out by McCoy Sanitation indicates he had an hourly wage of \$13.25 but shows on one week 32 hours were worked for wages in the amount of \$429; the next week 32 hours were worked for wages in the amount of \$430 and four weeks later, 32 hours were worked for pay in the amount of \$425. Miller also argued that he never failed to report he was working.

Miller submitted a single paystub in an attempt to prove that McCoy Sanitation's figures are incorrect. The paystub in the record shows Miller worked only 8 hours during the week of March 21, 2009 through March 27, 2009 and was paid \$106.

CONCLUSIONS OF LAW

The issue is whether Herbert Miller has been overpaid benefits in the amount of \$1,105.

Iowa law provides that the division of job service may, in its discretion, recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.²

Miller's arguments that McCoy Sanitation reported incorrect numbers to the department are without merit. Miller failed to present testimony from anyone at McCoy Sanitation that the individual who filled out the Wages Cross Match Sheet supplied incorrect information. Additionally, it is clear from the Wages Cross Match sheet that McCoy Sanitation filled out that McCoy was paid in fractions of hours. The Wages Cross Match Sheet does not allow for fractions of hours and asks for the amount of wages to be rounded off. These factors explain the differences between the amounts of wages McCoy Sanitation reportedly paid Miller in the three weeks in which he worked 32 hours.

Neither is the paystub submitted by Miller effective in proving his case. First, the year to date wages paid as reflected on the check equals \$3,757.32. That amount is much closer to the total wages reported by McCoy as opposed to those reported by Miller. The differences in the two are likely attributable to the factors mentioned above. Additionally, the Wages Cross Match sheet filled out by McCoy indicates Miller received two checks on March 27, 2009, one for 8 hours and one for 34.46 hours. Miller has not supplied the second check. Finally, while McCoy denies ever failing to report wages earned, the check he submitted proves him wrong. Miller failed to report any wages earned for the week ending March 28, 2009, the week reflected by the paystub.

While it would have been helpful had Workforce Development participated in the hearing and explained the figures on the Wages Cross Match sheet supplied to the agency by McCoy Sanitation, the preponderance of the evidence demonstrates that Miller was overpaid unemployment compensation in the amount of \$1,105 and Workforce Development's decision should be affirmed.

DECISION

The decision of the representative dated November 12, 2009, reference 05, is AFFIRMED. The claimant is overpaid benefits \$1,105.

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² Iowa Code section 96.3(7).