

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

Appeal Number: 11IWDUI132

OC: 4/21/11

Claimant: Appellant (4)

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 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.

**MELISSA JAMIESON
2750 CRESTLINE AVENUE
WATERLOO, IA 50702-5811**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50309**

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.

JOE WALSH, IWD

(Administrative Law Judge)

July 27, 2011

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Melissa Jamieson filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated April 21, 2011 (reference 03). In this decision, the Department determined that Ms. Jamieson was overpaid \$393 in unemployment insurance benefits for two weeks between March 20, 2011 and April 2, 2011. The decision states that the overpayment resulted from the appellant incorrectly reporting wages earned with Lutheran Services in Iowa.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on June 10, 2011 to schedule a contested case hearing. The hearing was initially scheduled for July 22, 2011. Prior to that date, the Department's representative requested a continuance as she was unavailable on the scheduled date. An Order Continuing Hearing was issued on July 1, 2011 rescheduling the hearing for July 26, 2011 at 8:30 AM. On July 26, 2011, a telephone appeal hearing was held before

Administrative Law Judge Laura Lockard. Appellant Melissa Jamieson appeared and presented testimony. Exhibits 1 through 7 were submitted by the Department and admitted into the record as evidence. No representative from the Department appeared for the hearing.

ISSUES

1. Whether the Department correctly determined that the appellant was overpaid unemployment insurance benefits and, of so, whether the overpayment was correctly calculated.
2. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

FINDINGS OF FACT

Melissa Jamieson filed a claim for unemployment benefits with an effective date of September 5, 2010. Her weekly benefit amount was \$335. Ms. Jamieson began working for Lutheran Services in Iowa on March 16, 2011.

Site manager Christine Blunt of Lutheran Services in Iowa submitted an Employer Verification of Work form to the Department that she signed on March 30, 2011. On that form, the employer documented that Ms. Jamieson worked 9.8 hours for the week ending March 19, 2011, 24 hours for the week ending March 26, 2011, and 24 hours for the week ending April 2, 2011. The form indicated that Ms. Jamieson's wages were \$312 for each of the weeks ending March 26 and April 2. (Exh. 3). At hearing, Ms. Jamieson explained that the hours she worked during the week ending March 19, 2011 were for training and that, after training, employees at her site could work up to 24 hours each week. Ms. Jamieson believes that Ms. Blunt put 24 hours for the two weeks ending March 26 and April 2 without looking up the actual hours she worked. (Jamieson testimony).

Ms. Jamieson submitted time and attendance records from Lutheran Services in Iowa which demonstrated that she worked eight hours during the week ending March 26, 2011 and 18.6 hours during the week ending April 2, 2011. Ms. Jamieson's hourly rate of pay was \$13 per hour during this time period. (Exh. 2, pp. 1-2). Ms. Jamieson reported to the Department in her weekly claims that she earned \$96 during the week ending March 26, 2011 and \$241 during the week ending April 2, 2011. Ms. Jamieson was paid \$322 in unemployment insurance benefits for the week ending March 26 and \$177 for the week ending April 2. (Exh. 4).

Based on the employer verification form that was submitted by Ms. Jamieson's employer, the Department determined that Ms. Jamieson should not have received any benefits during the week ending March 26 and should have received only \$106 in benefits for the week ending April 2. (Exh. 4). On that basis, the Department issued a decision on April 21, 2011 finding that Ms. Jamieson was overpaid in the amount of \$393. (Exh. 6). While the decision found that the overpayment was a result of misrepresentation, there is no evidence in the record regarding the Department's

rationale for determining that there was misrepresentation on Ms. Jamieson's part.

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.¹ If a claimant is overpaid benefits as a result of misrepresentation, the Department may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant's real or personal property and rights to property.²

A. Overpayment

As an initial matter, I credit the time and attendance sheets that Ms. Jamieson provided to the Department showing the hours she worked at Lutheran Services in Iowa during the weeks in question. I found Ms. Jamieson credible on this point. I note as well that the Employer Verification of Work form that Ms. Jamieson's employer filled out purporting to show the hours she worked from March 16, 2011 through April 2, 2011 was filled out on Wednesday, March 30, 2011. The employer filled out the form with two weekdays left in the work week. Consequently, it is not difficult to believe this was an estimate by the employer rather than an exact statement of hours worked.

An individual who is partially unemployed may receive unemployment insurance benefits if she is working less than her normal full-time week for an employer and is earning less than her weekly benefit amount plus fifteen dollars.³ Ms. Jamieson, then, could have earned up to \$350 in a week and still received some amount of unemployment benefits. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant's wages in the week that exceed 25% of the weekly benefit amount.⁴

For the week ending March 26, 2011, Ms. Jamieson earned \$104 for 8 hours of work at \$13 per hour. Applying the formula above, Ms. Jamieson was entitled to receive \$314.75 in unemployment insurance benefits. She was actually paid \$322. Consequently, she was overpaid by \$7.25 that week.

For the week ending April 2, 2011, Ms. Jamieson earned \$241.80 for 18.6 hours of work at \$13 per hour. Applying the formula above, Ms. Jamieson was entitled to receive \$176.95. She was actually paid \$177. Consequently, she was overpaid by 5 cents that week.

¹ Iowa Code § 96.3(7)(a) (2011).

² 871 Iowa Administrative Code (IAC) 24.18.

³ Iowa Code § 96.19(38)(b)(1) (2011).

⁴ 871 IAC 24.18.

The total overpayment attributable to Ms. Jamieson for the weeks ending March 26 and April 2, 2011 is \$7.30.

B. Misrepresentation

A finding of misrepresentation is supported when an individual receives benefits while not eligible “by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact.”⁵ Ms. Jamieson credibly testified that she accidentally misstated her wages by approximately \$8 during the week ending March 26, 2011. It was the first week that she had called in a claim when she had wages to report and she made an honest error. She correctly reported her wages for the week ending April 2, 2011.⁶ Under these circumstances, the Department’s finding of misrepresentation is unsupported by the record.

DECISION

Iowa Workforce Development’s decision dated April 21, 2011 is MODIFIED. The appellant was overpaid benefits in the amount of \$7.30. The Department’s finding that the overpayment was a result of misrepresentation is reversed. The overpayment is not attributable to misrepresentation. The Department shall take any action necessary to implement this decision.

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⁵ Iowa Code § 96.16(4) (2011).

⁶ Ms. Jamieson reported earning \$241 for the week ending April 2, 2011. It is unclear from the record whether there is any ability to report other than a full dollar amount when making a claim. I give Ms. Jamieson the benefit of the doubt and assume that it is not. Her report for the week ending April 2, 2011 was very nearly exact.