

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

Appeal Number: 06-IWDUI-193
OC: 12/04/05
Claimant: Appellant (2)

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.

JOHN L MORRO
6886 280TH STREET
HARTLEY IA 51346

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION 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)

October 27, 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 September 21, 2006, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$310.00, because he incorrectly reported his wages earned with WW Swine Farms Inc. for the 2-weeks ending January 14, 2006.

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

19, 2006. The claimant participated. Cindy Stroud, 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 December 4, 2005. The claimant claimed for and received unemployment benefits during the first quarter of 2006.

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

An employer representative reported it paid the claimant gross wages of \$620 for sixty-two hours of work sometime during the week ending January 28, 2006. Investigator Stroud reviewed the entire claim record, and she concluded that the wages applied to the weeks ending January 7 (\$310), and January 14 (\$310), 2006. Since the claimant had reported wages of \$150, and \$160 for the same weeks, the department concluded he under-reported his wages that caused an overpayment of \$150, and \$160 for those weeks.

Stroud mailed a notice to the claimant dated September 6, 2006 regarding the total overpayment of \$310, and when the claimant did not respond, the decision was issued.

The claimant's personal records show that he worked about sixty-two hours for the last two-weeks of December 2005, and first two weeks of January 2006, for which he was paid \$620 on January 26, 2006. The employer's audit report confirms that the claimant did not work during the week ending January 21, and January 28, 2006. The employer did not pay the claimant on a regular basis. The department noted that the claimant's wage reports for the remaining audit period did correspond to the employer report to the department.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$310, 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 NOT overpaid benefits \$310 for the 2-weeks ending January 14, 2006 pursuant to Iowa Code section 96.16-4. The employer did a poor job of reporting that the claimant worked sixty-two hours and earned regular wages of \$620 during the week ending January 28, 2006 when it is apparent the claimant did not work that week or the week before. The employer's report caused Investigator Stroud to review the entire claimant's claim, and make a determination as to when the claimant worked and earned the \$620. The claimant offered credible testimony according to his personal records that the wages earned were for 4-weeks of work, not 2-weeks. The employer's audit report regarding the claimant's work and wages is not reliable to the point that the claimant may be considered overpaid.

DECISION:

The decision of the representative dated September 21, 2006, reference 03, is REVERSED. The claimant is NOT overpaid benefits \$310 due to misrepresentation.

rls