

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

Appeal Number: 04-IWDUI-227
OC: 05/23/04
Claimant: Appellant (6-R)

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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

GARY D THOMAS
2300 BEAVER AVENUE #3
DES MOINES IA 50310

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

DAN ANDERSON, IWD

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.

(Administrative Law Judge)

December 30, 2004

(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 December 1, 2004, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$6,063.00, because of misrepresentation in failing to report wages earned with Des Moines Chrysler Plymouth for the 21-weeks ending October 30, 2004.

After due notice was issued, a hearing was held by telephone conference call on December 27, 2004. The claimant participated. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Lori Busma.

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 May 23, 2004.

A wage cross-match audit was done on the claimant's claim for the second, third and fourth quarters of 2004. Des Moines Chrysler Plymouth reported to the department the gross wages earned by the claimant for the 21-weeks ending October 30, 2004. The department compared the employer's report against the claimant's unemployment claims for the same weeks.

The claimant did not report any work and wages for the 21-weeks of the audit review, and the department paid him benefits totaling \$6,063.00. Investigator Busma mailed notice to the claimant with the audit information on November 15, 2004 regarding the overpayment. The claimant did not respond to the notice. Investigator Busma concluded the claimant misrepresented his claims by failing to report his work and wages.

The claimant moved from his address of record in June 2004 where he had lived with his former wife. The claimant's wife helped him establish his May 2004 unemployment claim, and she had access to his personal identification number.

The claimant did not receive the audit notice, and he did not learn about the overpayment until he received the overpayment decision. The claimant has filed a report with the Des Moines Police Department regarding the overpayment, and he believes that his former wife may have filed claims for the 21-weeks ending October 30, 2004, and had the benefits deposited to her bank account. Detective Jim Kelly of the Des Moines Police Department is conducting an investigation (Case #04-45379).

After hearing the testimony, the claimant and Investigator Busma stipulated that this matter be remanded to Investigation and Recovery, Iowa Workforce Development, for further review.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$6,063.00, 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 department overpayment decision should be DISMISSED and SET ASIDE, and that the overpayment issue is REMANDED to Investigation and Recovery for further review. Should the department determine that the claimant is overpaid benefits, then it may issue a new decision in this matter.

DECISION:

The decision of the representative dated December 1, 2004, reference 03, is DISMISSED, and SET ASIDE. The overpayment issue is REMANDED to Investigation and Recovery for further review.

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