

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

**Appeal Number: 04-IWDUI-223**  
**OC: 01/11/04**  
**Claimant: Appellant (1)**

**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, 4<sup>th</sup> Floor Lucas Building, Des Moines, Iowa 50319.**

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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.

**MARY A HUNTER**  
**13619 430<sup>TH</sup> STREET**  
**PLANO IA 52581**

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.

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

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

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(Administrative Law Judge)

December 23, 2004

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(Decision Dated & Mailed)

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Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated November 22, 2004, reference 01, which held that the claimant was overpaid unemployment benefits in the amount of \$4,074.00, because she incorrectly reported her wages earned with Olan Mills Inc. during a 27-week period from January 11, 2004 to August 14, 2004.

After due notice was issued, a hearing was held by telephone conference call on December 20, 2004. The claimant participated. Iowa Workforce Development, Investigation and Recovery

participated by Investigator, Karen von Behren.

#### 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 claimant filed a claim for unemployment benefits with an effective date of January 11, 2004. The department conducted a routine audit of the claimant's claim for the first quarter of 2004 that expanded to a review period ending August 14, 2004.

The department received a bi-weekly pay history for the claimant that resulted in an overpayment determination with a notice to the claimant dated August 26, 2004. After a rescheduling and further notice to the claimant, an in-person meeting occurred with Investigator von Behren on October 4, 2004.

During the meeting, von Behren learned that the claimant was guaranteed a \$50 daily rate against her earned commissions each day. If the claimant had sales commissions that exceeded the \$50 daily rate, that amount would be deducted, like a draw, and the excess would be her commission for the day. The claimant did speak with a department representative about what earnings she should report when claiming for unemployment benefits each week. The claimant believed she need report only the \$50 guaranteed rate, and not any excess commissions that she earned each day.

The claimant did not dispute the re-computation of the overpayment by Investigator von Behren, which she reviewed prior to the department issuing the overpayment decision. The claimant questioned why the department delayed in determining the overpayment and that she was incorrectly reporting her commissions each week. The claimant also believed that the department should have some of the responsibility for the overpayment based on the advice she had been given.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$4,074.00.

#### **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 overpaid benefits \$4,074.00 for the 27-week period ending August 14, 2004 pursuant to Iowa Code Section 96.3-7. The claimant was

advised that the ALJ does not have authority to compromise or settle any overpayment, if the amount determined by the department is correct. The claimant admitted during the hearing that the department correctly calculated the amount of the overpayment.

**DECISION:**

The decision of the representative dated , 2004, reference 0, is AFFIRMED. The claimant is overpaid benefits \$4,074.00.