

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

Appeal Number: 07-IWDUI-080
OC: 11/12/06
Claimant: Appellant (4)

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

ROBIN L GOLDEN
7005 PRAIRIE AVENUE
URBANDALE IA 50322-2634

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
INVESTIGATION 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

(Administrative Law Judge)

June 29, 2007

(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 May 23, 2007, reference 04, which held that the claimant was overpaid unemployment benefits in the amount of \$186.00, because she incorrectly reported or failed to report wages earned with HS Medical Services for the 2-week period ending November 25, 2006.

After due notice was issued, a hearing was scheduled for a telephone conference call on June 25,

2007. The claimant submitted documentation (Exhibit A) in lieu of participation. Irma Lewis, 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 November 12, 2006. The claimant claimed for and received unemployment benefits during the fourth quarter of 2006.

The department audited the claimant's unemployment claim for the fourth quarter of 2006, and an HS Medical Services representative reported to the department the gross earnings paid to the claimant during the two-week period ending November 25, 2007. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department determined the claimant was overpaid benefits \$186 for the two-weeks ending November 25, 2006. The department audit confirmed that the claimant last worked on November 10, 2006, but she received some vacation pay that it credited to the subsequent weeks.

The claimant submitted documentation in lieu of personal participation in this hearing. The claimant has repaid the overpayment. The claimant contends she did not intend to misrepresent her claim.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$186, 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 overpaid benefits \$186 for the 2-week ending November 25, 2006 pursuant to Iowa Code section 96.3-7. Since the claimant has repaid the overpayment, there is no further issue as to this matter.

The claimant did report wages in both weeks that she was overpaid, and her employer did not protest the vacation pay issue that gave rise to the overpayment. Since the claimant last work for her employer prior to the payment of vacation pay, it does not appear she gave false information by reporting she did not work during the two-weeks claimed that caused the overpayment.

DECISION:

The decision of the representative dated May 23, 2007, reference 04, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$186, but it is NOT due to misrepresentation. The overpayment has been repaid and satisfied.

rls