

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

Appeal Number: 08-IWDUI-028
OC: 10/21/07
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 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.

FRANK J RINCHIUSO JR
317 E MORGAN STREET
SEYMOUR IA 52590-1224

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)

February 29, 2008

(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 February 6, 2008, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$778.00, because he failed to report wages earned with Smithway Motor Xpress for the two-week period ending January 12, 2008.

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

25, 2008. 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 October 21, 2007. The claimant claimed for and received unemployment benefits during the first quarter of 2007.

The department audited the claimant's unemployment claim when it received a report from a Smithway Motor Express representative that the claimant began full-time employment on January 3, 2008. The Smithway (employer) representative reported the claimant's hours worked, and the gross wages he earned for the two-weeks ending January 12, 2008. The department compared the employer's wage report against the claimant's claims for the same weeks.

The claimant filed unemployment claims for the two-weeks ending January 12, 2008, and he reported no work and wages earned. The claimant received a benefit of \$389 for each week. The employer reported the claimant earned gross wages of \$425 for the week ending January 5, and \$885 for the week ending January 12, 2008. Based on the employer's wage report, the claimant was not entitled to receive any benefit for either week.

Investigator Stross mailed an audit notice with documentation to the claimant on January 22, 2008 regarding the \$778 overpayment. When the claimant failed to respond, the department issued the overpayment decision. Since the claimant failed to explain why he did not report his wages when claiming for benefits, the department concluded he misrepresented his claim.

The claimant did receive a department information booklet that states on page four that a claimant is to report wages when earned, not when received. The claimant spoke with a department representative about when to report wages while claiming for benefits, and he understood that it was when he was paid. The claimant was paid his gross wages for the two-weeks ending January 12, on January 18, 2008. The claimant did not file an unemployment claim after the week ending January 12. The claimant is not challenging the overpayment amount in this hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$778, 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 \$778 for the two-week period ending January 12, 2008 pursuant to Iowa Code section 96.3-7. The claimant offered a credible explanation as to why he failed to report his first two-weeks of wages with his employer. The claimant had a mistaken belief he was to report his wages when paid (January 18) rather than when he earned them. The claimant admitted the err that lead to his overpayment, and he is not challenging the amount. The claimant's overpayment was due to his failure to carefully read and follow the department information. While the claimant should have been alerted about the need to report his work and wages as earned while claiming benefits, he had a mistaken belief that he was not required to report his wages until he was paid.

DECISION:

The decision of the representative dated February 26, 2008, reference 03, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$778, but it is NOT due to misrepresentation.

rls