

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

RAY G JACOBS
3909 83RD STREET
URBAN DALE IA 50322

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

DAN ANDERSON, IWD

Appeal Number: 04-IWDUI-226
OC: 11/30/03
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.

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 23, 2004

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated November 29, 2004, reference 01, which held that the claimant was overpaid unemployment benefits in the amount of \$878.00, because he failed to correctly report his wages earned with IAS, Inc., Foundation Service Corporation and the International Union of Operating Engineers during a period from April 18, 2004 to May 15, 2004.

After due notice was issued, a hearing was held by telephone conference call on December 22,

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 that: The claimant filed a claim for unemployment benefits with an effective date of November 30, 2003. The department audited the claimant's claim during a review period from April 18, 2004 to May 15, 2004. Three Employers (IAS, Inc., Foundation Service Corporation (FSC), International Union of Operating Engineers) reported paying some wages to the claimant for the four-weeks ending May 15, 2004. The department compared the employers' report of wages paid to the claimant against his claim record for the same weeks.

IAS and FSC reported paying wages of \$194 and \$73 to the claimant for the week ending April 24, 2004 that totaled \$267. The claimant reported wages of \$194. Based on the employers' report, the claimant should have received a benefit of \$156, not \$229, which causes an overpayment of \$73. IAS reported paying wages of \$378 to the claimant for the week ending May 1, 2004, while the claimant did not report any wage. Based on the employer's report, the claimant should not have received any benefit, which causes an overpayment of \$339 for that week.

The department concluded that the claimant had an overpayment of \$228 for the week ending May 8, and \$238 for the week ending May 15, for a total overpayment of \$878 (\$73, \$339, \$228, \$238). Investigator Busma mailed a notice with the audit information to the claimant on November 9, 2004, and when he did not respond by the deadline date, the department issued the decision.

During the hearing, the claimant did not have any information and/or record to dispute the overpayment of \$73 and \$339 for the two-weeks ending May 1, 2004. The claimant questioned the report of wages by the Operating Engineers (Union), because he believed it to be strike pay. Busma explained that strike pay is considered as wages that are reportable to the department, and deducted from the payment of unemployment.

After hearing the claimant's testimony, Busma conceded that the overpayment for the week ending May 8 should be reduced to \$184, but increased to \$260 for the week ending May 15. The department correction reduces the overpayment from \$878 to \$856. The claimant speculated that his work for a brother that paid him every two weeks (IAS) might have caused him to miss-report his wages during the audit review period.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$878.00.

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 \$858.00 for the 4-weeks ending May 15, 2004 pursuant to Iowa Code Section 96.3-7. The claimant did not have any record or information to dispute the overpayments of \$73 and \$339 for the 2-weeks ending May 1, 2004. After hearing the claimant's testimony, Investigator Busma did correct the overpayments for the 2-weeks ending (May 8 - \$228 to \$184, and May 15 - \$238 to \$260) that reduced the total overpayment for the four-weeks from \$878 to \$856. The claimant made a good faith err in reporting his wages while claiming for benefits that caused him to be overpaid.

DECISION:

The decision of the representative dated November 29, 2004, reference 01, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$856.00.

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