

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

Appeal Number: 07-IWDUI-129
OC: 03/04/07
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, 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

TRISHA L ROSS
1216 OFFICE PARK RD #35
WEST DES MOINES IA 50265-2461

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)

September 28, 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 August 29, 2007, reference 04, which held that the claimant was overpaid unemployment benefits in the amount of \$224.00, because she failed to report wages earned with Eighth Street Café LLC for the week ending March 10, 2007.

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

September 24, 2007. The claimant did not participate. Irma Lewis, Investigator, participated for Iowa Workforce Development, Investigation and Recovery.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of March 4, 2007. The claimant claimed for and received unemployment benefits during the first quarter of 2007.

The department audited the claimant's unemployment claim for the first quarter of 2007, and a representative for Jimmy's American Cafe reported to the department the gross earnings paid to the claimant during the period from March 4, 2007 to April 7, 2007. The department compared the employer's wage report against the claimant's claims for the same weeks.

The claimant filed a claim for the week ending March 10, 2007, and she reported no work and wages. The claimant received a benefit of \$334. As to the same week, the employer reported the claimant worked fifteen hours and she received gross earnings (as a server and closer) of \$307. Based on the employer's earnings report, the claimant was entitled to a benefit of \$110, not \$334 that meant she was overpaid \$224.

Investigator Lewis mailed a notice to the claimant dated August 13, 2007 regarding the \$224 overpayment, and she included the department audit information. The claimant did not respond. Lewis concluded the claimant misrepresented her claim by failing to report her work and wages for the week ending March 10.

After the claimant's appeal, Lewis re-checked the claimant's wage information with the employer representative who responded to the audit. Lewis received a fax of an employee check record for the claimant that showed she had more earnings than what had been reported in the initial audit. The department was unable to forward the information for this hearing, and it requests to stand on the initial determination.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$224, 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 \$224 for the week ending March 10, 2007 pursuant to Iowa Code section 96.16-4. The department established that the claimant failed to report her work and earnings that is misrepresentation. If the department had been able to secure the employee check record at an earlier date, the overpayment amount could well be in excess of what the department determined in the initial audit. The department is willing to stand by its initial decision.

DECISION:

The decision of the representative dated August 29, 2007, reference 04, is **AFFIRMED**. The claimant is overpaid benefits \$224 due to misrepresentation.

rls