

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

Appeal Number: 06-IWDUI-219
OC: 01/08/06
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

JAMES G GATHERCOAL
1008 MAIN STREET E
GRAND JUNCTION IA 50107-9646

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)

December 22, 2006

(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 November 16, 2006, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$776.00, because he failed to report wages earned with FMC Masonry for the period from April 16, 2006 to June 3, 2006.

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

18, 2006. The claimant did not participate. Cindy Stroud, 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 January 8, 2006. The claimant claimed for and received unemployment benefits during the second quarter of 2006.

The department audited the claimant's unemployment claim for the second quarter of 2006, and an FMC Masonry representative reported to the department the gross earnings paid to the claimant during the period from April 16, 2006 to June 3, 2006. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department concluded that the claimant had some overpayment in each of four weeks that totaled \$780, but some under-payment of \$4 that reduced the overpayment to \$776.

Investigator Stroud mailed an audit notice to the claimant regarding the \$776 overpayment on October 16, 2006, but the claimant failed to respond with any information to refute the overpayment. The claimant did place a call to the Investigator, but he failed to return the call with any information. The department concluded the claimant misrepresented his claims due to the substantial difference in the amount of wages he reported against his actual earnings.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$776, 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 \$776 for four weeks during the second quarter audit period ending June 3, 2006 pursuant to Iowa Code section 96.16-4. The claimant failed to offer any information in his appeal, and he failed to participate in this hearing to refute the evidence relied upon by the department that he had an overpayment totaling \$776. Misrepresentation is established by a pattern of the claimant substantially under-reporting his wages in order to receive more benefits than what he was entitled to receive.

DECISION:

The decision of the representative dated November 16, 2006, reference 03, is AFFIRMED. The claimant is overpaid benefits \$776 due to misrepresentation.

rls