

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319-8082

Appeal Number: 17IWDUI169
OC: 05/22/16
Claimant: Appellant (04)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ADUNNI NOIBI
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CORALVILLE, IA 52241

JENI LARA, IWD INVESTIGATIONS
JONI BENSON, IWD
JODI DOUGLAS, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, UI APPEALS MANAGER

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.

Charles B. Tarvin, Administrative Law Judge

January 20, 2017
(Dated and Mailed)

Iowa Code section 96.3(7) – Recovery of overpayment of benefits.

STATEMENT OF THE CASE

On October 28, 2016, Claimant/Appellant Adunni Noibi filed the appeal from a decision letter issued by Iowa Workforce Development (IWD) on October 18, 2016, reference 04, concluding that from May 22, 2016 to August 27, 2016, Noibi received an overpayment (\$1,155.00) of unemployment insurance benefits (UIB) because she incorrectly reported wages earned.

On November 23, 2016, IWD transmitted the case to the Iowa Department of Inspections and Appeals (DIA), Division of Administrative Hearings (administrative hearings) to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Noibi.

On November 30, 2016, DIA issued a *Notice of Telephone Hearing (NOTH)* to the parties that incorrectly stated the issue raised by Noibi in the appeal. On December 22, 2016, Noibi waived timely receipt of a NOTH correctly stating the issue raised in the appeal.

On December 22, 2016, Administrative Law Judge Charles B. Tarvin convened the hearing. Noibi participated in the hearing. Jeni Lara, an IWD investigator, represented IWD. The judge admitted the IWD decision letter, appeal with pay stub, IWD exhibits A1 – C4, and digital file into the record.

ISSUE

Whether the department correctly established and requested repayment of an alleged overpayment of unemployment insurance benefits.

FINDINGS OF FACT

On November 18, 2014, employer GM hired Noibi as a server. Employer GM reported federal taxable gross earnings for Noibi with two components: gross earnings and tips.

On May 22, 2016, Noibi filed a claim for unemployment insurance benefits (UIB). IWD approved the claim for a weekly benefit amount of \$488.00.

On June 10, 2016, Noibi received a pay stub from employer GM reporting the following:

gross earnings	\$ 53.25	
tips	<u>\$ 99.60</u>	
federal taxable gross	\$152.85	(pay stub)

IWD initiated an audit of Noibi's claim. It assigned Lara, an IWD investigator, to complete the audit. (testimony of Lara)

On September 21, 2016, Lara issued a preliminary audit notice, an audit for reported wages, and the Work Number wage verification to Noibi stating that from May 22, 2016 to August 27, 2016, Noibi may have received UIB (\$1,155.00) to which Noibi was not entitled due to failure to report and/or incorrectly reporting gross earnings received from employer GM. If Noibi failed to respond to the notice by October 3, 2016, then IWD will issue a decision letter based on the information in its possession. (exhibit A1-9)

Prior to October 3, 2016, Noibi contacted Lara and reported that employer GM overstated Noibi's gross earnings. Lara suggested that Noibi contact the payroll administrator with employer GM to clarify the issue.

As of October 18, 2016, Noibi failed further to clarify the "payroll dispute" with Lara. (testimony of Lara)

The following chart sets out the amounts reported by Noibi and the amounts that employer GM reported during the weeks indicated, as well as the amount of benefits Noibi received each week and the amount of benefits that Noibi should have received if her wages were as reported by employer GM:

Wk ending	Reported by Claimant	Reported by Employer	UI Benefits Rec'd	Benefits entitled	Overpymt
05/28/16	0.00	146.00	488.00	464.00	24.00
06/04/16	0.00	153.00	488.00	457.00	31.00
06/11/16	0.00	301.00	488.00	309.00	179.00
06/18/16	51.00	365.00	488.00	245.00	243.00
06/25/16	54.00	180.00	488.00	430.00	58.00
07/02/16	54.00	205.00	488.00	405.00	83.00
07/09/16	50.00	299.00	488.00	311.00	177.00
07/16/16	54.00	186.00	488.00	424.00	64.00
07/23/16	54.00	97.00	488.00	488.00	0.00
07/30/16	20.00	320.00	488.00	290.00	198.00
08/06/16	52.00	147.00	488.00	463.00	25.00
08/13/16	35.00	115.00	488.00	488.00	0.00
08/20/16	36.00	156.00	488.00	454.00	34.00
08/27/16	27.00	161.00	488.00	449.00	39.00

Total \$1,155.00
(exhibit A1-9)

On October 18, 2016, IWD issued a decision letter (reference 04) in which it concluded that from May 22, 2016 to August 27, 2016, Noibi received an overpayment (\$1155.00) of UIB because she incorrectly reported wages earned. (exhibit B)

CONCLUSIONS OF LAW

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. See Iowa Code section 96.2.

"Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined. See Iowa Code section 96.19(41).

An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar. See Iowa Code section 96.3(3).

An individual who is partially unemployed may receive unemployment insurance benefits if the individual is working less than the individual's normal full-time week for an employer and is earning less than the individual's weekly benefit amount plus fifteen dollars. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant's wages in the week that exceed 25% of the weekly benefit amount. See 871 Iowa Administrative Code (IAC) section 24.18.

Under Iowa law, if a claimant receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the claimant acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the claimant directly or by deducting the overpayment from any future benefits payable to the overpaid claimant. See 871 IAC section 25.8.

If a claimant is overpaid benefits as a result of misrepresentation [i.e., to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth See 871 IAC section 25.1] IWD may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant's real or personal property and rights to property. See Iowa Code section 96.16(4) and 871 IAC section 25.8(2).

In the case at issue, on May 22, 2016, Noibi filed a claim for UIB. IWD approved the claim for a weekly benefit amount of \$488.00.

IWD initiated an audit of Noibi's claim. It assigned Lara, an IWD investigator, to complete the audit.

During the period (May 22, 2016 – August 27, 2016) at issue, employer GM employed Noibi as a server. As a server, Noibi received gross earnings and tips. IWD correctly determined that for the purpose of computing Noibi's weekly UIB, Noibi's weekly wages included Noibi's gross earnings and tips. Iowa Code section 96.19(41).

IWD relied on an electronic data source (*The Work Number*) when determining Noibi's weekly wages. When comparing the wages (\$152.85) reported by *The Work Number* for the pay stub received by Noibi from employer GM for the week ending on June 5, 2016 with the wages (i.e., gross earnings and tips) listed by employer GM on Noibi's pay stub for the week ending June 5, 2016, the wages matched. Based on a preponderance of evidence, *The Work Number* was a reliable electronic data source when computing the wages received from employer GM by Noibi during the period at issue.

Noibi testified that throughout the period at issue, she never received the weekly wages (i.e., gross earnings and tips) listed by employer GM on her pay checks. Although the IWD investigator, during the audit, encouraged Noibi to clarify the issue through the payroll administrator with employer GM, Noibi never submitted a written statement from employer GM tending to corroborate Noibi's testimony that throughout the period at issue, employer GM consistently overstated the weekly gross earnings and/or tips that Noibi received. Noibi's testimony that she never received the weekly wages that were reported by employer GM was not found to be reliable.

Noibi testified that throughout the period at issue, she never received her full weekly benefit amount (i.e., \$488) of UIB. IWD responded that when Noibi filed her claim, Noibi opted to have federal and state taxes withheld from her weekly UIB. If Noibi had not opted to have taxes withheld from her weekly UIB, then Noibi would have needed to pay the taxes out of her own pocket. In summary, Noibi “received” her full weekly benefit amount, the net portion of which was paid to Noibi and the federal/state tax portion of which was paid to the IRS and Iowa Department of Revenue on Noibi’s behalf.

In summary, IWD submitted credible evidence that during the period at issue, Noibi consistently underreported weekly wages received. IWD concluded that any overpayment received by Noibi was not caused by misrepresentation and did not assess a 15% administrative penalty against Noibi.

For the week ending May 28, 2016, Noibi received \$146 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$24. Deducting \$24 from her benefits is \$464. Because Noibi only was entitled to receive \$464 in unemployment insurance benefits, she received an overpayment of \$24 for the week ending May 28, 2016.

For the week ending June 4, 2016, Noibi received \$153 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$31. Deducting \$31 from her benefits is \$457. Because Noibi only was entitled to receive \$457 in unemployment insurance benefits, she received an overpayment of \$31 for the week ending on June 4, 2016.

For the week ending June 11, 2016, Noibi received \$301 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$179. Deducting \$179 from her benefits is \$309. Because Noibi only was entitled to receive \$309 in unemployment insurance benefits, she received an overpayment of \$179 for the week ending June 11, 2016.

For the week ending June 18, 2016, Noibi received \$365 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$243. Deducting \$243 from her benefits is \$245. Because Noibi only was entitled to receive \$245 in unemployment insurance benefits, she received an overpayment of \$243 for the week ending June 18, 2016.

For the week ending June 25, 2016, Noibi received \$180 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$58. Deducting \$58 from her benefits is \$430. Because Noibi only was entitled to receive \$430 in unemployment insurance benefits, she received an overpayment of \$58 for the week ending June 25, 2016.

For the week ending July 2, 2016, Noibi received \$205 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$83. Deducting \$83 from her benefits is \$405. Because Noibi only was entitled to receive \$405 in unemployment insurance benefits, she received an overpayment of \$83 for the week ending July 2, 2016.

For the week ending July 9, 2016, Noibi received \$299 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$177. Deducting \$177 from her benefits is \$311. Because Noibi only was entitled to receive \$311 in unemployment insurance benefits, she received an overpayment of \$177 for the week ending July 9, 2016.

For the week ending July 16, 2016, Noibi received \$186 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$64. Deducting \$64 from her benefits is \$424. Because Noibi only was entitled to receive \$424 in unemployment insurance benefits, she received an overpayment of \$64 for the week ending July 16, 2016.

For the week ending July 30, 2016, Noibi received \$320 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$198. Deducting \$198 from her benefits is \$290. Because Noibi only was entitled to receive \$290 in unemployment insurance benefits, she received an overpayment of \$198 for the week ending July 30, 2016.

For the week ending August 6, 2016, Noibi received \$147 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$25. Deducting \$25 from her benefits is \$463. Because Noibi only was entitled to receive \$463 in unemployment insurance benefits, she received an overpayment of \$25 for the week ending August 6, 2016.

For the week ending August 20, 2016, Noibi received \$156 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$34. Deducting \$25 from her benefits is \$454. Because Noibi only was entitled to receive \$454 in unemployment insurance benefits, she received an overpayment of \$34 for the week ending August 20, 2016.

For the week ending August 27, 2016, Noibi received \$161 in wages and \$488 in unemployment insurance benefits. Subtracting one-quarter (\$122) of her benefits from her wages is \$39. Deducting \$39 from her benefits is \$449. Because Noibi only was entitled to receive \$449 in unemployment insurance benefits, she received an overpayment of \$39 for the week ending August 27, 2016.

The actions of IWD establishing and requesting repayment of an overpayment (\$1,155) of UIB received by Noibi from May 22, 2016 to August 27, 2016 are AFFIRMED. 871 IAC section 25.8.

DECISION

IWD's decision dated October 18, 2016, reference 04, is AFFIRMED

CBT