

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

Appeal Number: 05-IWDUI-0942
OC: 04/25/04
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.**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

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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
INVESTIGATIONS 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)

May 20, 2005

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal
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 April 8, 2005, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$434.00, because of misrepresentation in failing to report or correctly report wages earned with Maytag for the 2-week period ending July 31, 2004.

After due notice was issued, a hearing was held by telephone conference call on May 16, 2005. The

claimant participated. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Cindy Stroud. Department Exhibit One was received as evidence.

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 April 25, 2004.

The department conducted a cross match audit on the claimant's claim for the third quarter of 2004. A representative of Maytag reported to the department the hours worked, wages earned and the vacation pay paid to the claimant during a review period in July 2004. The department compared the employer's audit report against the claimant's unemployment claims for the same weeks.

The employer reported it paid vacation pay of \$1,188 to the claimant for the week ending July 24, 2004, and gross wages of \$775 for the week ending July 31. The claimant did not report any wages for the week ending July 24, and \$200 for wages the week ending July 31. The claimant claimed for and received benefits of \$311 for the week ending July 24, and \$188 for the week ending July 31.

The department determined that the claimant earned excessive vacation pay and wages for the 2-weeks ending July 31, 2004, which caused an overpayment of \$311 and \$188 for the weeks at issue. Investigator Stroud noted the claimant had a \$65 under-payment for having exhausted his benefits for the week ending December 25, 2004 that reduced the total overpayment from \$499 to \$434.

Stroud mailed a notice to the claimant regarding the \$434 overpayment on March 22, 2005, and he responded by fax on March 28. The claimant questioned the timing of the \$1,188 vacation payment.

The claimant was laid-off by Maytag on July 2, 2004, and re-called to work on July 29. The claimant was laid-off due to a temporary plant shutdown for the first week of August. Maytag paid the claimant vacation his \$1,188 vacation pay on August 5, and he did not file any unemployment claim for that week.

Investigator Stroud stipulated that the vacation pay disqualification should be removed for the week ending July 24, 2004, and the overpayment should be reduced to \$123. However, Stroud affirmed the misrepresentation for the week ending July 31 due to the substantial difference in the report of actual wages earned for that week.

The claimant delayed his appeal by one-week after contacting his local workforce center due to consolidating another issue involving his unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant filed a timely appeal.

The administrative law judge concludes the claimant affected a timely appeal, because he had a good cause for delaying it one-week due to consolidating a separate issue for review by his local office.

The further issue is whether the claimant is overpaid benefits \$434, and if so, whether it is due to 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 \$123 for the week ending July 31, 2004 pursuant to Iowa Code section 96.16-4. The department stipulated that the overpayment for the week ending July 24 should be set aside as the vacation pay should have been applied to a subsequent week in August 2004 when the claimant did not claim for benefits. However, the claimant did not offer a sufficient reason to explain why he substantially under-reported his wages for the week ending July 31, 2004 that is misrepresentation.

DECISION:

The decision of the representative dated April 8, 2005, reference 03, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$123 due to misrepresentation.

rls