

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 11IWDUI206

OC: 4/11/10

Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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 Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

**WILLETTA LADD
207 E. TROWBRIDGE ST.
DES MOINES, IA 50315-3665**

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

**IOWA WORKFORCE DEVELOPMENT
IRMA LEWIS
INVESTIGATIONS AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50309**

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.

JOE WALSH, IWD

(Administrative Law Judge)

October 13, 2011

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Willetta Ladd filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated July 21, 2011 (reference 02). In this decision, the Department determined that Ms. Ladd was overpaid \$3,880 in unemployment insurance benefits between September 26, 2010 and April 16, 2011. The decision stated that the overpayment resulted from the claimant incorrectly reporting wages from Wells Fargo Financial.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 18, 2011 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on August 22, 2011. On September 9, 2011, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Irma Lewis represented the Department and presented testimony. Appellant Willetta Ladd appeared and presented testimony.

Exhibits 1 through 19 were submitted by the Department and admitted into the record as evidence.

ISSUES

1. Whether the Department correctly determined that the appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.
2. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

FINDINGS OF FACT

Willetta Ladd filed a claim for unemployment benefits with an effective date of April 11, 2010. Ms. Ladd made claims for and received unemployment benefits during the fourth quarter of 2010 and the first and second quarters of 2011.

The Department conducted a routine audit of Ms. Ladd's unemployment claim for the fourth quarter of 2010. The Department solicited information from Wells Fargo regarding Ms. Ladd's wages during the fourth quarter of 2010. Wells Fargo responded with information regarding Ms. Ladd's wages from January, 2010 through April, 2011. The payroll information Wells Fargo provided included information regarding regular wages, overtime wages, and bonus payments.¹

Wells Fargo reports payroll information to the Department on a bi-weekly basis only; a weekly breakdown of wages is not included. The Department has in the past requested that Wells Fargo break down the payroll information submitted into weekly increments, but it will not do so. Consequently, the Department in this case took the bi-weekly gross wages reported and halved them in order to come up with a gross wage amount for each week in question. (Lewis testimony). At hearing, Ms. Ladd acknowledged that her hours do not typically vary from week to week; there can be a slight variation if she has to come in early for a meeting, but that occurs only occasionally. (Ladd testimony).

After receiving the payroll information from Wells Fargo, the Department compared it with the wages that Ms. Ladd reported earning when she called in her unemployment claims each week. The amounts reported by Ms. Ladd and Wells Fargo differed. Ms. Ladd's weekly benefit amount during this time period was \$402. (Lewis testimony; Exh. 14).

The following chart sets out the amounts claimed by Ms. Ladd and reported by Wells Fargo, as well as the amount of benefits Ms. Ladd received each week and the amount of benefits the Department believes Ms. Ladd should have received if her wages had been correctly reported.

¹ Wells Fargo uses the following abbreviations for the various pay types: REG (regular wages), OVT (overtime wages), and BOC (bonus payments). Wells Fargo employees can receive bonus pay for attendance or for production. (Lewis testimony; Exh. 16).

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employer</i>	<i>Benefits rec'd</i>	<i>Benefits entitled</i>
10/2/10	\$225	\$346	\$277	\$156
10/9/10	\$225	\$347	\$277	\$155
10/16/10	\$225	\$346	\$277	\$156
10/23/10	\$225	\$347	\$277	\$155
10/30/10	\$225	\$341	\$277	\$161
11/6/10	\$225	\$341	\$277	\$161
11/13/10	\$225	\$393	\$277	\$109
11/20/10	\$225	\$394	\$277	\$108
11/27/10	\$225	\$294	\$277	\$208
12/4/10	\$225	\$294	\$277	\$208
12/11/10	\$225	\$294	\$277	\$208
12/18/10	\$225	\$294	\$277	\$208
12/25/10	\$275	\$456	\$227	\$0
1/1/11	\$225	\$456	\$277	\$0
1/8/11	\$300	\$456	\$202	\$0
1/15/11	\$300	\$386	\$202	\$116
1/22/11	\$231	\$386	\$202	\$116
1/29/11	\$231	\$396	\$271	\$106
2/5/11	\$231	\$396	\$271	\$106
2/12/11	\$231	\$346	\$271	\$156
2/19/11	\$224	\$347	\$278	\$155
2/26/11	\$224	\$346	\$278	\$156
3/5/11	\$224	\$347	\$278	\$155
3/12/11	\$224	\$346	\$278	\$156
3/19/11	\$224	\$347	\$278	\$155
3/26/11	\$224	\$353	\$278	\$149
4/2/11	\$230	\$354	\$272	\$148
4/9/11	\$230	\$376	\$272	\$126
4/16/11	\$232	\$377	\$270	\$125

(Exh. 14).

Based on these figures, the Department determined that Ms. Ladd was overpaid in the amount of \$3,880. (Exh. 14).

After determining the discrepancy between the amounts reported by Ms. Ladd and her employer, the Department sent Ms. Ladd a preliminary audit notice on June 23, 2011. That notice advised her of the discrepancy and gave her an opportunity to respond. (Exh. 13). Ms. Ladd responded to the preliminary audit notice by letter dated June 30, 2011. In her letter, she indicated that she was unable to locate all of her pay stubs, but she attached those she could locate. She also disputed the figures that Wells Fargo provided to the Department, arguing that the employer provided total earnings figures rather than her current taxable income. (Exh. 18).

Upon receipt of Ms. Ladd's letter, Irma Lewis, the Department's investigator, contacted Shayme Sevier, Wells Fargo's payroll director in Garden City, New York. Ms. Sevier advised Ms. Lewis that there is a difference between the total earnings and current taxable income on Ms. Ladd's paystubs because she has elected to have Wells Fargo take her health insurance premiums out of her paycheck on a pre-tax basis. She is not taxed on the earnings that she puts toward her premium, but they do count as part of her total earnings. Wells Fargo is not paying the premium for Ms. Ladd; rather, Wells Fargo is allowing Ms. Ladd to use a portion of her earnings to pay her health care premium before taxes are taken out of that portion. (Lewis testimony).

On July 21, 2011, the Department issued a decision to Ms. Ladd notifying her that she was overpaid by \$3,880 as a result of misrepresentation. (Exh. 11). Ms. Ladd appealed the decision.

At hearing, Ms. Ladd's main argument was that the Department should not have counted the portion of her earnings that went to health insurance premiums as part of her total earnings for unemployment purposes. Likewise, Ms. Ladd argued that the bonuses she received, which went directly into her 401(k) and were not paid into her bank account, should not have counted as part of her total earnings.

Ms. Ladd testified that the way she calculated her earnings for purposes of reporting her weekly unemployment claims was to take the bi-weekly net earnings from the paycheck she received immediately prior to the reporting week and cut that number in half. (Ladd testimony). When Ms. Ladd applied for unemployment insurance benefits, she was mailed a copy of a Facts About Unemployment Guide. On page two of that document, claimants are instructed to report all earnings before deductions. Additionally, claimants are instructed to report wages when they are earned, not when they are paid. (Lewis testimony).

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.² If a claimant is overpaid benefits as a result of misrepresentation, the Department 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.³

² Iowa Code § 96.3(7)(a) (2011).

³ 871 Iowa Administrative Code (IAC) 24.18.

A. Overpayment

The Department presented credible evidence from Ms. Ladd's employer that Ms. Ladd earned more during the weeks in question than she reported. While Wells Fargo did not provide weekly earnings data, the Department's decision to treat one-half of the bi-weekly gross earnings reported as weekly gross earnings for each of the two weeks of the reporting period was accurate based on Ms. Ladd's own acknowledgment that her hours did not vary widely, if at all, from week to week.

Ms. Ladd's contention that the Department should not have included earnings that went to pay her health insurance premium or earnings that went to fund her 401(k) is not supported by the applicable law and regulations. The Department's regulations spell out the categories of pay that are not deductible from unemployment benefits; there is no exemption for pre-tax wages that go to pay health insurance premiums.⁴ The fact that Ms. Ladd was permitted by her employer to apply pre-tax wages to pay her health insurance premiums does not change the character of those earnings; they are still wages that are deductible for unemployment insurance purposes. Regarding the bonus payments that went into Ms. Ladd's 401(k) plan, the Department's regulations exempt bonus payments that are based on services performed before the time period when the individual is claiming benefits. Incentive pay that is based on services performed during the benefits period, however, is deductible from unemployment insurance benefits.⁵ The documentation provided to the Department by Wells Fargo supports the conclusion that the bonus pay Ms. Ladd received during the weeks in question was pay that was earned during the benefits period. Consequently, the Department correctly included it in Ms. Ladd's gross earnings figures.

An individual who is partially unemployed may receive unemployment insurance benefits if she is working less than her normal full-time week for an employer and is earning less than her weekly benefit amount plus fifteen dollars.⁶ Ms. Ladd, then, could have earned up to \$417 in a week and still received some amount of unemployment benefits. 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.⁷

Applying the above formula, the Department correctly determined that Ms. Ladd was overpaid in the amount of \$3,880.

B. Misrepresentation

A finding of misrepresentation is supported when an individual receives benefits while not eligible "by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact."⁸ I find that the evidence in the case supports the conclusion

⁴ See 871 IAC 24.13(4).

⁵ 871 IAC 24.13(2)(c), (4)(b).

⁶ Iowa Code § 96.19(38)(b)(1) (2009).

⁷ 871 IAC 24.18.

⁸ Iowa Code § 96.16(4) (2011).

that Ms. Ladd misunderstood what she was required to report as income when she was making her weekly unemployment claims. Ms. Ladd believed that she did not have to report that portion of her earnings that was not paid directly to her; that is, she believed she did not have to report the portion that was taken for taxes, to pay her health insurance premium, and to fund her 401(k). While her belief about what she was required to report was in error, Ms. Ladd did not deliberately misrepresent her earnings here. As such, the Department's conclusion that the overpayment was a result of misrepresentation is erroneous.

DECISION

Iowa Workforce Development's decision dated July 21, 2011, reference 02, is **AFFIRMED IN PART** and **REVERSED IN PART**. The Department's determination that the appellant was overpaid unemployment benefits in the amount of \$3,880 is affirmed. The Department's determination that the appellant was overpaid as a result of misrepresentation is reversed. The Department shall take any action necessary to implement this decision.

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