

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

Appeal Number: 08-IWDUI-009
OC: 02/04/07
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 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.

MARY S TROXEL
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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
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)

February 8, 2008

(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 January 4, 2008, reference 01, which held that the claimant was overpaid unemployment benefits in the amount of \$348.00, because she failed to report wages earned with Haddonstone USA for the period from March 25, 2007 to April 21, 2007.

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

4, 2008. The claimant participated. Jane Connor, Investigator, participated for Iowa Workforce Development, Investigation and Recovery.

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 February 4, 2007. The claimant claimed for and received unemployment benefits during the second quarter of 2007.

The department audited the claimant's unemployment claim for the second quarter of 2007, and a Haddonstone representative reported to the department the gross earnings paid to the claimant during the period from March 25, 2007 to April 21, 2007. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department concluded that the claimant was overpaid benefits \$348 for the audit review period. The employer representative reported the claimant worked forty-hours for the weeks ending March 31, April 7, and April 14, 2007, and she had gross wages of \$314 for each week. The claimant worked thirty-two hours the week ending April 21, and she had wages of \$251. The claimant did not report any work and wages for these four weeks, and she was paid a benefit of \$87 for each week.

Investigator Connor mailed a notice with the department audit documentation to the claimant on December 6, 2007. Although the claimant did receive it, she did not respond as it was delayed due to mail forwarding that was after the reply period. Since Connor did not receive a response, and the claimant failed to report her work, Connor concluded she misrepresented her claim(s).

The claimant did not report her first week of work (March 31), as she understood it was temporary employment, and did not believe she should report it. The claimant did not report the remaining weeks, because the employer reported her pay monthly that was after the period of the claims. The claimant thought she could report her wages when received rather than when she worked based on a food stamp program eligibility criteria. The claimant did acknowledge that she worked the hours and earned the wages as reported by her employer though she disagreed as to how it should apply to her claims.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$348, 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 \$348 for the 4-week period ending April 21, 2007 pursuant to Iowa Code section 96.3-7. The department correctly computed the amount of the overpayment based on the law that requires work and wages be reported in the week earned, not when the pay was received. The claimant made a good faith err in reporting her wages when paid that is not misrepresentation.

DECISION:

The decision of the representative dated January 4, 2008, reference 01, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$348, but it is NOT due to misrepresentation.

rls