

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

Appeal Number: 06-IWDUI-192
OC: 12/18/05
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

**VIRGIE L SCOTT
2710 CYPRESS DRIVE
BETTENDORF IA 52722**

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)

October 27, 2006

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated September 20, 2006, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$347.00, because he incorrectly reported wages earned with First Student Transportation during a period from January 1, 2006 to April 8, 2006.

After due notice was issued, a hearing was scheduled for telephone conference call on October 19,

2006. The claimant did not participate. Iowa Workforce Development, Investigation and Recovery, did not participate.

FINDINGS OF FACT:

The administrative law judge, having examined all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits with an effective date of December 18, 2005. The department audited the claimant's claim for the first quarter of 2006. A representative of First Student Transportation reported to the department the wages earned by the claimant during the audit period.

The department compared the employer's wage report against the claimant's claims for unemployment benefits, and it determined that he had some overpayment in three of the weeks that totaled \$347. The employer reported gross earnings of \$295, \$253, and \$223 for the weeks ending January 7, January 14, and April 8, 2006, while the claimant reported \$98, \$98 and \$102 for the same weeks. Based on the employer's wage report the claimant was not entitled to any of the benefits that he received for the three weeks, to wit: \$117, \$117, and \$113.

Investigator Carnahan mailed a preliminary audit notice to the claimant dated August 24, 2006 regarding the \$347 overpayment. The claimant has failed to provide evidence that refutes the overpayment determination.

The claimant and the department failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$347.00.

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 \$347.00 for the 3-week period ending April 8, 2006 pursuant to Iowa Code Section 96.3-7. The department relied on the employer's wage report that determined the claimant under-reported his earnings for three of the weeks during the audit review period that caused him to be overpaid. The claimant has failed to provide evidence to refute the employer's wage report and/or his earnings.

DECISION:

The decision of the representative dated September 20, 2006, reference 02, is **AFFIRMED**. The

claimant is overpaid benefits \$347.00.

rls