

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

Appeal Numbers:

**09-IWDUI-193
09-IWDUI-194**

OC: 01-20-08

Claimant: Appellant (1)

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.

**ARDIS JOHNSON
PO BOX 82
BANCROFT, IA 50517-0082**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209**

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.

Dan Anderson, IWD

(Administrative Law Judge)

September 28, 2009

(Decision Dated & Mailed)

Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE

Claimant Ardis K. Johnson filed appeals from two Iowa Workforce Development Department decisions. The first, dated August 19, 2009, reference 02, held Johnson received a net overpayment of unemployment insurance benefits in the amount of \$334 for the period from May 18, 2008 through August 16, 2008. The second decision was issued August 20, 2009, reference 03. It held Johnson received a net overpayment of benefits in the amount of \$431 for the period from August 31, 2008 through January 3, 2009. Both decision cited a failure to accurately report wages earned with Hawkeye Health Systems and Pizza Ranch as the basis for the overpayments.

Hearing was held on September 28, 2009. Ardis K. Johnson appeared and represented herself. Investigator Jane Connor appeared on behalf of Workforce Development. Ms. Connor offered Exhibits 1 – 8, each of which was admitted into evidence. Official notice was taken of the administrative record.

FINDINGS OF FACT

Ardis Johnson filed a claim for unemployment insurance benefits effective January 20, 2008. Johnson made claim for and received benefits during the last three quarters of 2008. Johnson received regular unemployment benefits from January 20, 2008 until they were exhausted during the week of August 16, 2008. Thereafter, she received extended unemployment benefits through the remainder of the year.

Hawkeye Health Systems and Pizza Ranch, Inc. reported to the department that they each paid wages to Johnson during the period in which she received unemployment benefits. Therefore, Iowa Workforce Development conducted an audit of Johnson's account.

Hawkeye Health Systems and Pizza Ranch were each asked to report the hours Johnson worked and the gross wages she earned each week during the three quarters in question. Their responses were then compared to the amount of earnings reported by Johnson each week. The comparison resulted in several discrepancies.

The amount of earnings reported by Johnson as compared to the amount reported by her employers is as follows:

<u>Week Ending</u>	<u>Wages Reported By</u>	
	<u>Johnson</u>	<u>Employers</u>
05-24-08	\$100	\$135
05-31-08	64	72
06-07-08	106	126
06-14-08	100	97
06-21-08	115	180
06-28-08	136	115
07-05-08	95	181
07-12-08	135	149
07-19-08	115	209
07-26-08	120	142
08-02-08	135	160
08-09-08	125	139
08-16-08	45	62
08-30-08	-----	-----
09-06-08	48	54
09-13-08	-----	-----
09-20-08	55	63
09-27-08	85	104
10-04-08	90	168
10-11-08	95	70
10-18-08	97	67
10-25-08	100	132
11-01-08	85	112
11-08-08	95	127
11-15-08	75	134
11-22-08	85	113
11-29-08	85	85
12-06-08	75	125
12-13-08	55	124
12-20-08	-----	38
12-27-08	20	32
01-03-09	40	122

Next, the department calculated the amount of benefits Johnson was entitled to each week based on the earnings reported by her employers. Those amounts were compared to the amount of benefits Johnson was paid on a weekly basis. That comparison is set forth below:

<u>Week Ending</u>	<u>Paid</u>	<u>Benefits Entitled</u>	<u>Under- payment</u>	<u>Over- payment</u>
05-24-08	\$122	\$ 87	\$ ----	\$ 35
05-31-08	158	150	----	8
06-07-08	116	96	----	20
06-14-08	122	125	3	-----
06-21-08	107	42	----	65
06-28-08	86	107	21	-----
07-05-08	127	41	----	86
07-12-08	87	73	----	14
07-19-08	107	-----	----	107
07-26-08	102	80	----	22
08-02-08	87	62	-----	25
08-09-08	97	83	-----	14
08-16-08	177	160	-----	17
08-30-08	123	178	55	-----
09-06-08	174	168	-----	6
09-13-08	178	178	-----	-----
09-20-08	167	159	-----	8
09-27-08	137	118	-----	19
10-04-08	132	54	-----	78
10-11-08	127	152	25	-----
10-18-08	125	155	30	-----
10-25-08	122	90	-----	32
11-01-08	137	110	-----	27
11-08-08	127	95	-----	32
11-15-08	147	88	-----	59
11-22-08	137	109	-----	28
11-29-08	137	137	-----	-----
12-06-08	147	97	-----	50
12-13-08	167	98	-----	69
12-20-08	178	178	-----	-----
12-27-08	178	178	-----	-----
01-03-09	178	100	-----	78
Totals ¹			\$134	\$899

Workforce Development subtracted the total underpayments of \$134 from the total overpayments of \$899 resulting in a net overpayment of \$765. On July 15, 2009 Investigator Connor sent Johnson a Preliminary Audit Notice informing her of the potential overpayment and allowing her to explain the discrepancies by

¹ Because Johnson was overpaid benefits while receiving regular unemployment and while receiving extended benefits, Workforce Development broke the overpayments down into two separate decisions; one involving the regular benefits and the second involving the extended benefits. Extended benefits began during the week ending September 6, 2008.

July 24, 2009. Johnson did not respond. Therefore, on August 19, 2009 Connor issued a decision, reference 02, holding Johnson received a net overpayment of unemployment insurance benefits while receiving regular benefits in the amount of \$334 for the period from May 18, 2008 through August 16, 2008. The following day, a decision was issued, reference 03, holding Johnson received a net overpayment of benefits while receiving extended benefits in the amount of \$431 for the period from August 31, 2008 through January 3, 2009.

Johnson filed this appeal. She argued she should not be responsible for paying back the entire overpayment in the amount of \$765 because she did not intentionally misrepresent her earnings. Johnson stated she was under the impression she was supposed to report her net income as opposed to her gross income.

CONCLUSIONS OF LAW

The issue is whether the claimant is overpaid benefits in the total amount of \$765.

Iowa law provides that the division of job service must recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.²

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.³ In order to receive weekly unemployment benefits, individuals must complete a voice response claim each week. The individual is required to report, among other things, whether the individual earned wages or received benefits during the week in question.⁴ The term “wages” is defined as “all remuneration for personal services ...”.⁵ Therefore, gross, as opposed to net earnings must be reported.

The evidence in this case is clear. Regardless of Johnson’s intent to accurately report her weekly wages, she failed to do so because she failed to report her gross earnings. As a result, Johnson received benefits to which she was not entitled. Therefore, the department’s decisions dated August 19, 2009 and August 20, 2009 should be affirmed.

DECISION

The decision of the representative dated August 19, 2009, reference 02, is

² Iowa Code section 96.3(7).

³ Iowa Code section 96.19(38)(b)(1).

⁴ 871 Iowa Administrative Code (IAC) 24.2(1)(g).

⁵ Iowa Code section 96.19(41)(a). (Emphasis supplied).

AFFIRMED. The claimant has been overpaid benefits in the net amount of \$334 for the weeks between May 18, 2008 and August 16, 2008.

Further, the decision of the representative dated August 20, 2009, reference 03, is AFFIRMED. The claimant has been overpaid benefits in the net amount of \$431 for the weeks between August 31, 2008 and January 3, 2009.

kka