

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

Appeal Number: 06-IWDUI-183
OC: 05/29/05
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

RON L VORWALD
5000 LINCOLN WAY LOT #111
CLINTON IA 52732-9793

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

DAN ANDERSON, IWD

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.

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.

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.

(Administrative Law Judge)

September 29, 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 1, 2006, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$166.00, because he incorrectly reported wages earned with Philip Services/North Central for 2-weeks between November 20, 2005 and December 17, 2005.

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

September 21, 2006. The claimant did not participate. Iowa Workforce Development, Investigation and Recovery, did not participate. Official Notice was taken of the Administrative File.

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 May 29, 2005. The department audited the claimant's claim for the fourth quarter of 2005, and a Philip Services/North Central representative reported the gross wages paid to the claimant for the period from November 19, 2005 through the week ending December 31, 2005. The department compared the employer's wage report against the claimant's claims for the same period.

The department concluded the audit with a finding that the claimant was overpaid benefits \$137 for the week ending November 26, 2005, and \$29 for the week ending December 17, 2005. The employer reported the claimant received gross wages of \$292 for the week ending November 26 (that included holiday pay), while the claimant reported \$155. The claimant received a benefit of \$262, but he was entitled to \$125 based on the employer's wage report. The employer reported the claimant received gross wages of \$112 (7-hours of work) for the week ending December 17 while the claimant reported no wages. The claimant received a benefit of \$334, but he was entitled to \$305 based on the employer's wage report.

Investigator Carnahan mailed a notice to the claimant on July 12, 2006 regarding the \$166 overpayment, and when the claimant did not refute the audit, the overpayment decision was issued.

The claimant was not available when called for the hearing. Investigation and Recovery did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$166.00.

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 \$166.00 for the week ending November 26, and the week ending December 17, 2005 pursuant to Iowa Code Section 96.3-7. The department audit shows the claimant was overpaid benefits that he has failed to refute.

DECISION:

The decision of the representative dated September 1, 2006, reference 02, is AFFIRMED. The claimant is overpaid benefits 166.00.