

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

Appeal Number: 13-IWDUI-466
OC: 12/2/12
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

RICHARD LEE
112 – 6th AVENUE
THAYER, IA 50254

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50309

JONI BENSON, IWD
DAVE EKLUND, 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)

November 22, 2013

(Decision Dated & Mailed)

Iowa Code Section 96.16(4) - Misrepresentation

Iowa Code Section 96.3(7) - Recovery of Overpayments

STATEMENT OF THE CASE

Claimant Richard Lee filed appeals from an Iowa Workforce Development decision dated September 16, 2013, reference 01. The decision held that he had been overpaid unemployment benefits in the total amount of \$1,584.00, because he failed to report wages earned from Cedar Valley Corp. The decision further held that the overpayment was due to Mr. Lee's misrepresentation.

IWD transmitted the case to the Department of Inspections and Appeals on September 30, 2013, to schedule a contested case hearing. A Notice of Telephone Hearing was issued on October 3, 2013, scheduling a hearing for November 22, 2013.

The case proceeded to a hearing by telephone on November 22, 2013. Appellant Richard Lee appeared pro se and testified. No person appeared for the respondent. The documents submitted by IWD labeled Exhibits 1 through 8, entered the record without objection.

FINDINGS OF FACT

Mr. Lee claimed and received unemployment insurance benefits from 11/17/12, until 1/5/13.

As part of an audit, IWD sent a form to the Cedar Valley Corp., Mr. Lee's employer, requesting wage information for the period from February 10, through April 6, 2013. This form showed no work or wages until March 3, 2013, and full time work thereafter. (Exhibit 1).

An IWD investigator filled out a cross match audit worksheet for an entirely different time period. Exhibit 2 shows that the employer reported wages earned by Mr. Lee for the weeks ending December 8, December 15, December 22, December 29, of 2012, and January 5, 2013. With the exception of the week ending December 29, 2012, Mr. Lee reported no wages for these weeks, and claimed unemployment insurance benefits in the amount of \$1,584. Mr. Lee reported income of \$999 for the week ending December 29, 2012, and he explained that this represented his annual bonus rather than wages. He properly reported the income and claimed no benefits for this week. (Exhibit 2; Lee testimony).

IWD sent exhibits 1 and 2 to Mr. Lee with a preliminary audit notice (Exhibit 3). Mr. Lee did not respond to the notice.

IWD then calculated an overpayment of \$1,584 for the period reflected in exhibit 2, December 8, 2012, through January 5, 2013. IWD issued the decision on appeal. This decision, dated September 16, 2013, found that Mr. Lee had been overpaid \$1,584 during this period for failure to report the wages reflected on exhibit 2. (Exhibit 5).

The appellant testified that he does work for the Cedar Valley Corp. This is a seasonal highway construction firm that cannot work during the winter months. Mr. Lee stated that he did not work during the period in question. Mr. Lee did not work during the winter of 2012 and 2013. He returned to work on March 3, 2013. While he did claim and receive unemployment benefits during this period, he did not receive wages. Mr. Lee stated that his wages are directly deposited into his bank account. The account records show no wages earned during December of 2012 and the first week of January, 2013. Rather the bank records show only unemployment benefits received during this time. The week ending December 29, 2012, is the only exception. Mr. Lee reported income of \$999 because he received a bonus from the employer. He did not work during that week and did not earn wages. He properly reported the bonus and did not receive benefits for that week. Mr. Lee noted that the form submitted by the employer, exhibit 1, supported his testimony. This form showed that he returned to work on March 3, 2013. (Lee testimony).

CONCLUSIONS OF LAW

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. Iowa Code section 96.3(7). If any benefits were received due to misrepresentation, the department is entitled to file a lien in the amount of the overpayment in favor of the state against any property owned by the benefits recipient. Iowa Code section 96.16(4).

The evidence in this case simply cannot support a conclusion that the appellant worked during the weeks for which an overpayment is claimed. The information submitted by the employer also does not support a conclusion that the appellant worked during the weeks for which an overpayment is claimed. On the contrary, the employer's submitted information supports the testimony of the appellant. The appellant's bank records, per his uncontradicted testimony, support the appellant's denial of any overpayment.

No evidence in the case indicates proper establishment of an overpayment. There is, therefore, no overpayment, and no misrepresentation.

DECISION

The decision dated September 16, 2013, reference 01, is REVERSED.

rhw