

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

Appeal Number: 10-IWDUI-027
OC: 07/13/08
Claimant: Appellant (3)

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.

**LEANN FREDRICKSON
308 W. ADAMS
FAIRFIELD, IA 52556**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATION 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)

April 12, 2010

(Decision Dated & Mailed)

Section 96.16-4 - Misrepresentation
Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE

Claimant LeAnn Fredrickson filed an appeal from an Iowa Workforce Development decision dated December 30, 2009, reference 04, which held that she had been overpaid unemployment benefits in the amount of \$767, because she incorrectly reported wages earned with Hy-Vee during the period from April 5, 2009 through July 4, 2009. The decision further held that the overpayment was due to misrepresentation on Mr. Clark's part.

A hearing was scheduled by way of telephone conference call on April 12, 2010. Ms. Fredrickson appeared and participated on her own behalf. Investigator Karen von Behren appeared and testified for Iowa Workforce Development, Investigation and Recovery. Documents numbered 1-17 submitted by IWD were admitted into the record.

FINDINGS OF FACT

LeAnn Fredrickson filed a claim for unemployment benefits with an effective date of July 13, 2008. Ms. Fredrickson made claim for and received unemployment benefits during the second quarter of 2009.

The department audited the Ms. Fredrickson's unemployment claim for the second quarter of 2009 because wages were reported for her at the same time she was receiving benefits. *Wages Cross Match* forms were sent to Hy-Vee, which responded by supplying gross wages paid to Ms. Fredrickson from the week ending April 4, 2009 through that ending July 4, 2009. The department compared the employers' wage reports against Mr. Clark's claims for the same weeks and determined that Ms. Fredrickson had underreported her wages. Based on the wages reported by Hy-Vee, the agency calculated that Ms. Fredrickson had been overpaid benefits in the amount of \$767.

Investigator Karen von Behren sent Ms. Fredrickson a *Preliminary Audit Notice* informing her of the potential overpayment and requesting that she respond in writing by December 16, 2009. When Ms. von Behren had not received anything from Ms. Fredrickson by December 17, 2009, she caused the December 30, 2009 decision to be issued.

Ms. Fredrickson filed this appeal.

After the appeal was filed, Ms. von Behren contacted Hy-Vee and asked that the employer supply her with a print-out showing gross wages paid to Ms. Fredrickson. Hy-vee responded and Ms. von Behren noticed some discrepancies between the wages originally reported by Hy-Vee and those reflected on the print-out. The Hy-Vee representative Ms. von Behren dealt with explained that she may have looked at the wrong employee's screen when filling out the original documentation of wages.

According to the print-out supplied by Hy-Vee, Ms. Fredrickson was paid the following in gross wages:

Week Ending	Gross Wage
April 5, 2009	\$257.25
April 12, 2009	267.00
April 19, 2009	267.00
April 26, 2009	270.75
May 3, 2009	262.50

May 10, 2009	269.25
May 17, 2009	268.50
May 24, 2009	282.00
May 31, 2009	284.25
June 7, 2009	274.50
June 14, 2009	225.75
June 21, 2009	278.25
June 28, 2009	272.25
July 5, 2009	169.50

During that same period, Ms. Fredrickson reported she earned the following wages:

Week Ending	Wages
April 4, 2009 ¹	\$250
April 11, 2009	210
April 18, 2009	262
April 25, 2009	157
May 2, 2009	210
May 9, 2009	202
May 16, 2009	210
May 23, 2009	315
May 30, 2009	157
June 6, 2009	262
June 13, 2009	210
June 20, 2009	210
June 27, 2009	157
July 4, 2009	210

Comparing the amount of benefits Ms. Fredrickson received based on the wages she reported to the amount of benefits she actually should have received based on the print-out of wages supplied by Hy-Vee shows that she received both an underpayment of benefits in one week and overpayments of benefits in several weeks:

Week Ending	Benefits Received	Benefits Entitled To	Difference
April 4, 2009	\$ ----	\$ ----	\$ -----
April 11, 2009	48	-----	48 + 25 ²
April 18, 2009	-----	-----	-----
April 25, 2009	101	-----	101 + 25
May 2, 2009	48	-----	48 + 25
May 9, 2009	56	-----	56 + 25

¹ The employer's computer system shows the weekly pay period as ending on Sundays. The agency's system shows each week ending on Saturday.

² Beginning on February 28, 2009, during each week in which Ms. Fredrickson received unemployment benefits she also received a \$25 federal stimulus payment. In order to be eligible for the stimulus payment, an individual must be eligible to have received at least \$1 in unemployment benefits. Therefore, during each week in which Ms. Fredrickson received benefits but was not entitled to receive any benefits whatsoever, the department also seeks to recover the stimulus payment.

Week Ending	Benefits Received	Benefits Entitled To	Difference
May 16, 2009	48	-----	48 + 25
May 23, 2009	-----	-----	-----
May 30, 2009	101	-----	101 + 25
June 6, 2009	-----	-----	-----
June 13, 2009	48	-----	48 + 25
June 20, 2009	48	-----	48 + 25
June 27, 2009	101	-----	101 + 25
July 4, 2009	48	88	40 ³

Thus, during the second quarter of 2009, Ms. Fredrickson received \$599 in unemployment benefits to which she was not entitled. She also received \$225 in federal stimulus payments to which she was not entitled. Finally, she was underpaid benefits in the amount of \$40 for one week which results in a final net overpayment of \$784.

At hearing, Ms. Fredrickson testified she was taken by surprise when she was first notified of the overpayment which resulted in her filing this appeal. However, Ms. Fredrickson has retained no documentation of the wages she earned during the period in question and gave no evidence contesting the wages reported by Hy-Vee or the amount of the overpayment as calculated by the agency.

CONCLUSIONS OF LAW

The issue is whether LeAnn Fredrickson has been overpaid benefits in the net amount of \$784.

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.⁴ 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.⁵

The uncontested evidence clearly demonstrates that Ms. Fredrickson was overpaid benefits during the weeks nine of the fourteen weeks audited. Additionally she received a \$25 federal stimulus payment in each of those weeks in which she was overpaid but to which she was not entitled resulting in total overpaid of \$824. Further, Ms. Fredrickson received an underpayment of benefits during the final week of the quarter in the amount of \$40, resulting in a net overpayment for the quarter of \$784.

³ During this week, Ms. Fredrickson over reported her wages and was underpaid benefits in the amount of \$40.

⁴ Iowa Code section 96.3(7).

⁵ Iowa Code section 96.16(4). The agency does not allege that the overpayment in this case was due to misrepresentation on Ms. Fredrickson's part. Ms. von Behren testified the overpayments appeared to be due to honest errors on Ms. Fredrickson's part.

Therefore, IWD's decision that Mr. Clark was overpaid benefits should be upheld. However, the amount of the overpayment must be modified from \$767 set out in the agency's December 20, 2009 decision to \$784 as shown by the evidence.

DECISION

The decision of the representative dated December 30, 2009, reference 04, is MODIFIED. The claimant has been overpaid benefits. The net amount of the overpayment is \$784.

kka