

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

Appeal Number: 10IWDUI323
OC: 12/20/09
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 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.

RICKY ANTHOFER
3610 12TH AVENUE SE APT. E5
CEDAR RAPIDS, IA 52404-1355

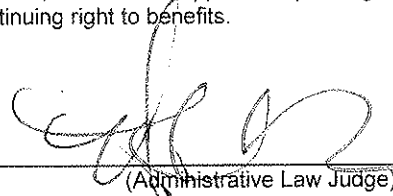
STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
150 DES MOINES STREET
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)

December 29, 2010

(Decision Dated & Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Claimant Ricky Anthofer filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated September 24, 2010, reference 04. IWD determined Anthofer received a \$1,513 overpayment between January 3, 2010 and February 27, 2010, due to misrepresentation.

IWD transmitted the case to the Department of Inspections and Appeals on December 19, 2010 to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Anthofer. A Notice of Telephone Hearing was issued on December 15, 2010, scheduling a hearing for December 29, 2010. IWD sent supplemental documents to Anthofer for the hearing on December 21, 2010.

On December 29, 2010, a contested case hearing was held before Administrative Law Judge Heather L. Palmer. Anthofer appeared and testified. Karen von Behren appeared and testified on behalf of IWD. Exhibits 1 through 11 were admitted into the record.

ISSUES

Whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.

Whether the overpayment was the result of misrepresentation.

FINDINGS OF FACT

Anthofer received unemployment benefits January through March 2010. IWD determined Anthofer weekly benefit amount was \$374. IWD received a report that Anthofer received compensation in January through March 2010.

IWD sent Wages Cross Match form to Anthofer's employer, Advance Services Inc. Advance Services Inc. completed a Wages Cross Match form confirming Anthofer received wages of \$439 for the week ending January 9, 2010, \$360 for the week ending January 16, 2010, \$248 for the week ending January 23, 2010, \$450 for the week ending January 30, 2010, \$551 for the week ending February 6, 2010, \$368 for the week ending February 13, 2010, \$304 for the week ending February 20, 2010, and \$454 for the week ending February 27, 2010.

IWD determined Anthofer received the following overpayments and underpayments

Week Ending	Wages Reported	Wages Received	UI Paid	UI Entitled	Underpayment	Overpayment
1/9/10	\$0	\$439	\$374	\$0	\$0	\$374
1/16/10	\$200	\$360	\$267	\$107	\$0	\$160
1/23/10	\$180	\$248	\$287	\$219	\$0	\$68
1/30/10	\$100	\$450	\$367	\$0	\$0	\$367
2/6/10	\$350	\$551	\$117	\$0	\$0	\$117
2/13/10	\$400	\$368	\$0	\$99	\$99	\$0
2/20/10	\$180	\$304	\$287	\$163	\$0	\$124
2/27/10	\$140	\$454	\$327	\$0	\$0	\$327

In addition to his regular unemployment, for each week Anthofer reported he was partially and totally unemployed, he received \$25 through the Economic Stimulus Package. IWD found that for the weeks Anthofer's gross income exceeded his weekly benefit amount by \$15 he was not entitled to receive benefits through the Economic Stimulus Package. IWD concluded the total amount of the overpayment was \$1,513. Anthofer appealed.

unemployment benefits, he received an overpayment of \$68 for the week ending January 23, 2010.

For the week ending February 13, 2010, Anthofer received wages of \$368, but reported receiving wages of \$400. Subtracting \$93 from \$368 is \$275. Deducting \$275 from his weekly benefit amount is \$99. Anthofer was entitled to \$99 in unemployment benefits. Because he was partially unemployed, Anthofer was entitled to \$25 through the Economic Stimulus Package. IWD has established Anthofer was underpaid.

For the week ending February 20, 2010, Anthofer received wages of \$304, but reported receiving wages of \$180. Subtracting \$93 from \$304 is \$211. Deducting \$211 from his weekly benefit amount is \$163. Because Anthofer was only entitled to receive \$163 in unemployment benefits, he received an overpayment of \$124 for the week ending February 20, 2010.

IWD has established that Anthofer received a total overpayment of \$1,513.

2. Misrepresentation

IWD determined the overpayments occurred because of misrepresentation. If an individual, by reason of a nondisclosure or misrepresentation receives unemployment benefits, IWD may either deduct the overpayment amount from any future benefits payable to the individual or seek repayment directly from the individual.⁶ Anthofer denied receiving notice of the alleged overpayment until the Notice of Decision was issued on September 24, 2010. The representative handling the file at that time was not present at hearing. IWD has not proven the overpayment was due to misrepresentation.

DECISION

IWD's decision dated September 24, 2010, reference 04, is affirmed in part and reversed in part. IWD correctly determined Anthofer received a \$1,513 overpayment, but did not prove the overpayment was due to misrepresentation.

hlp

⁶ *Id.* § 96.16(4).

REASONING AND CONCLUSIONS OF LAW

1. Overpayment

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.¹ IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.²

An individual is totally unemployed in any week the individual has no payable wages.³ An individual is deemed partially unemployed when the individual works less than the individual's regular full-time week and earns less than the individual's weekly benefit, plus \$15.⁴

Anthofer's weekly benefit amount was \$374. \$374 plus \$15 is \$389. For the weeks ending January 9, 2010, January 30, 2010, February 6, 2010, and February 27, 2010, Anthofer's gross income exceeded \$389. Because Anthofer's gross income exceeded \$389 he was not entitled to receive any unemployment benefits. Therefore IWD has established a claim for the overpaid unemployment benefits and the \$25 he received each week through the Economic Stimulus Package.

For the weeks ending January 16, 2010, January 23, 2010, February 13, 2010, and February 20, 2010 Anthofer was partially unemployed. When an individual earns less than the individual's weekly benefit amount plus \$15, "the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount."⁵ One-fourth of Anthofer's weekly benefit amount is \$93.50.

For the week ending January 16, 2010, Anthofer received wages of \$360, but reported receiving wages of \$200. Subtracting \$93 from \$360 is \$267. Deducting this from his weekly benefit amount is \$107. Because Anthofer was only entitled to receive \$107 in unemployment benefits, he received an overpayment of \$160 for the week ending January 16, 2010.

For the week ending January 23, 2010, Anthofer received wages of \$248, but reported receiving wages of \$180. Subtracting \$93 from \$248 is \$155. Deducting \$155 from his weekly benefit amount is \$219. Because Anthofer was only entitled to receive \$219 in

¹ Iowa Code § 96.3(7) (2009).

² *Id.*

³ *Id.* § 96.19(38)a.

⁴ *Id.* § 96.19(38)b(1).

⁵ 871 IAC 24.18.