

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

Appeal Number: 06-IWDUI-230
OC: 07/03/05
Claimant: Appellant (4)

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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**FREDERICK L MIMS
699 SHERRYLYNN BOULEVARD #27
PLEASANT HILL IA 50327-2141**

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

DAN ANDERSON, IWD

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)

December 29, 2006

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated December 1, 2006, reference 04, which held that the claimant was overpaid unemployment benefits in the amount of \$306.00, because he failed to report wages earned with Crown Services for the period from April 30, 2006 to June 24, 2006.

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

27, 2006. The claimant participated. Irma Lewis, Investigator, participated for Iowa Workforce Development, Investigation and Recovery.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of July 3, 2005. The claimant claimed for and received unemployment benefits during the second quarter of 2006.

The department audited the claimant's unemployment claim for the second quarter of 2006, and a Crown Services representative reported to the department the gross earnings paid to the claimant during the period from April 30, 2006 to July 1, 2006. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department audit report showed the claimant had an overpayment totaling \$694 for six weeks of the review period. However, the audit report showed the claimant had an underpayment for three weeks totaling \$388 that reduced the overpayment to \$306.

Investigator Lewis mailed the claimant a notice regarding the \$306 overpayment with the audit documents that included the employer wage report on November 1, 2006. The claimant called on November 2, and he expressed his disagreement with the overpayment by stating that he would produce his pay stubs to show that his wages were less than what the employer reported. When the claimant failed to produce any documentation to dispute the employer's wage report, the department issued the decision. After the appeal, Investigator Lewis re-checked the employer's earnings report for the claimant with the representative who affirmed the information as originally reported.

The claimant reported wages for the weeks he was determined to be overpaid with the exception of the week ending June 24, 2006. The employer reported wages of \$285, and he received a benefit of \$332 when it should have been \$130 causing an overpayment of \$202.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$306, and if so whether it is the result of misrepresentation.

Iowa Code Section 96.16-4 provides:

4. Misrepresentation. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

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 \$306 for the six-weeks ending July 1, 2006 pursuant to Iowa Code section 96.3-7. Since the claimant reported wages for five of the six weeks he was overpaid, and incurred an underpayment during three weeks of the audit period, it is believable that he made good faith errs in reporting his wages that is not misrepresentation. Although the claimant believes he correctly reported his earnings, he did not have any documentation to refute the employer's wage report that is the basis for the overpayment.

DECISION:

The decision of the representative dated December 1, 2006, reference 04, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$306, but it is NOT due to misrepresentation.

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