

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

Appeal Number: 06-IWDUI-133
OC: 12/19/04
Claimant: Appellant (2)

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

LARRY L PADGET
21820 HIGHWAY 16
BIRMINGHAM IA 52535

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.

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

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)

June 30, 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 May 25, 2006, reference 01, which held that the claimant was overpaid unemployment benefits in the amount of \$404.00, because he failed to report wages earned with Van Buren Community Schools for the 7-week period from November 6, 2005 to December 31, 2005.

After due notice was issued, a hearing was scheduled for a telephone conference call on June 27, 2006. The claimant participated. Karen von Behren, Investigator, participated for Iowa Workforce

Development, Investigation and Recovery. Official Notice was taken of the Department's June 22, 2006 fax communication.

FINDINGS OF FACT:

The administrative law judge having examined all of the evidence in the record finds: The claimant filed a claim for unemployment benefits with an effective date of December 19, 2004. The claimant claimed for and received unemployment benefits during the fourth quarter of 2005.

The department audited the claimant's unemployment claim for the third quarter of 2005, and Van Buren Community Schools reported to the department the gross earnings paid to the claimant during the period from November 6, 2005 to December 31, 2005. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department relied on the employer's wage report, and it concluded the claimant incurred a benefit overpayment totaling \$404 during the seven-week review period.

The claimant appealed the department's decision with the contention that he did not work for the employer during the period it reported earnings. Investigator von Behren confirmed with the employer that the claimant last worked on October 26, 2005, and that the employer reported the earnings in error.

Investigator von Behren requests the overpayment be rescinded and the decision be set aside without a formal hearing. The claimant was contacted regarding the department request and he concurs.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$404, 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 NOT overpaid benefits \$404 for the 7-week period ending December 31, 2005 pursuant to Iowa Code section 96.16-4. The employer erred by reporting to the department earnings for the claimant during a period he did not work. When the department confirmed the err, it requested the overpayment be set aside without a requirement to conduct a formal hearing, and the claimant concurred.

DECISION:

The decision of the representative dated May 25, 2006, reference 01, is REVERSED. The claimant is NOT overpaid benefits \$404 due to misrepresentation. The overpayment is rescinded.

rls