

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

Appeal Number: 13IWDUI511

OC: 7/14/13

Claimant: Appellant (4)

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.**

SIMON L. ONAK
3211 30th ST, BLDG G #33
DES MOINES, IA 50310

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

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY
430 EAST GRAND AVE.
DES MOINES, IA 50309
IRMA LEWIS**

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.

JONI BENSON, IWD

(Administrative Law Judge)

December 19, 2013

(Decision Dated & Mailed)

Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits
Iowa Code § 96.16(4) -

STATEMENT OF THE CASE

The Claimant, Simon L. Onak, filed a timely appeal from a decision issued by Iowa Workforce Development (IWD) dated October 3, 2013, reference 03. In this decision, IWD stated as follows:

You are overpaid \$386.00 for 2 weeks between 07/21/13 and 08/03/13. This is because you failed to report wages earned with QPS Employment Group...
... A 15% penalty will be added due to misrepresentation.

Upon receiving Mr. Onak's appeal, IWD transmitted this case to the Department of Inspections and Appeals on or about October 22, 2013 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on November 5, 2013. On December 18, 2013, a

telephone appeal hearing was held before Administrative Law Judge Carol J. Greta. Mr. Onak appeared personally and testified on his own behalf. Investigator Irma Lewis represented IWD and presented testimony.

ISSUES

The two issues presented here are (1) whether IWD correctly determined that the Claimant was overpaid unemployment benefits and, if so, the amount and (2) whether IWD correctly determined the overpayment was a result of misrepresentation.

FINDINGS OF FACT

When contacted to report for an interview with Ms. Lewis about evidence that he had been paid for working the two weeks ending July 27, 2013 and August 3, 2013. Mr. Onak provided two pay stubs and admitted to Ms. Lewis that he had made a mistake when he reported no earnings. For the two weeks in question, Mr. Onak received unemployment benefits totally \$386. The overpayment has been established. The fighting issue is whether the overpayment was the result of misrepresentation.

In his testimony, Mr. Onak stated that he worked periodically through QPS Employment Group. He testified that the episodic nature of his work through QPS, understanding which weeks he was receiving unemployment benefits, as well as the reporting system of IWD confused him. Thus, he meant no deception when he answered "no" to the question whether he had been paid for working when he called in at the end of the two weeks in question.

Ms. Lewis pointed out in her testimony that the calling system provides warning to claimants that providing false information is a violation of the unemployment law.

REASONING AND CONCLUSIONS OF LAW

IWD is mandated to recover unemployment insurance benefits that have been overpaid, regardless whether the claimant who received the benefits was acting "in good faith and is not otherwise at fault." Iowa Code § 96.3(7).

As of July 1, 2013, IWD "shall assess a penalty equal to fifteen percent" (15%) of an overpayment if the overpayment is the result of fraudulent misrepresentation. Iowa Code § 96.16(4)(b).

Having heard the testimony by both parties, the undersigned concludes that Mr. Onak was overpaid in the amount of \$386. However, there is no convincing proof that the overpayment was the result of fraud or an intent to misrepresent facts. Mr. Onak credibly testified that he was genuinely confused by what he was to report. While Ms. Lewis is correct that all claimants of unemployment insurance benefits receive multiple admonitions that the information they provide to IWD must be true and correct, that does not negate the confusion voiced by Mr. Onak.

DECISION

Iowa Workforce Development's decision dated October 3, 2013, reference 03, is MODIFIED IN FAVOR OF THE CLAIMANT/APPELLANT. IWD shall take steps to recover the overpayment of \$386, but shall not assess the 15% penalty.