

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

**Appeal Number: 06-IWDUI-098**  
**OC: 06/19/05**  
**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 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.

**LYUBOV A HOFER**  
**PO BOX 1166**  
**SIOUX CITY IA 51102**

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

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(Administrative Law Judge)

May 19, 2006

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(Decision Dated & Mailed)

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Section 96.6-2 - Timeliness of Appeal  
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 March 7, 2006, reference 06, which held that the claimant was overpaid unemployment benefits in the amount of \$359.00, because she incorrectly reporting wages or failed to report wages earned with Miller Brothers Furniture Co. during the period beginning June 26, 2005, and ending October 1, 2005.

After due notice was issued, a hearing was scheduled for telephone conference call on May 15, 2006. The claimant participated with the assistance of Interpreter, Andry Khomuntov. Larry Finley, Investigator for Investigation and Recovery, participated for Iowa Workforce Development. Official Notice was taken of the claimant's appeal letter and documentation submitted with it for the hearing.

## 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 that: The claimant filed a claim for unemployment benefits with an effective date of June 19, 2005. The department audited the claim for the third quarter of 2005. A representative of Mitchell Brothers Furniture Co. reported the hours-worked and weekly wages earned by the claimant during the audit review period from June 26, 2005 to October 1, 2005.

The department compared the employer's wage report against the claimant's claims for the same weeks, and it concluded that there were ten-weeks of an overpayment totaling \$361, and one week of an underpayment of \$2, for a net overpayment of \$359.

After Investigator Finley mailed a notice to the claimant on February 15, 2006 with the audit documentation, the claimant responded and participated in an interview with him. The claimant provided paycheck stubs showing her gross earnings, and her personal calendar record of the days/hours she worked for her employer during the audit review period.

Investigator Finley concluded that the claimant was overpaid benefits, because she was reporting her "net" earnings (after deduction for taxes) rather than her "gross" earnings, as required by the Iowa Employment Security law. The claimant repaid the \$359 overpayment to the department.

Finley issued the department decision to confirm the overpayment, and he concluded the claimant misrepresented her claim when she failed to report her work (19 hours), and earnings (\$152) for the week ending August 20, 2005, for which she received a benefit of \$310 rather than an entitlement of \$235.

The claimant filed an appeal objecting to any misrepresentation and questioning whether the employer correctly paid her for the hours she actually worked each week. The administrative law judge reviewed the monthly calendar entries made by the claimant, for the purpose of recording her hours-worked for the employer during the audit review period. With the exception of the weeks ending July 2, and July 23, 2005, the hours recorded by the claimant are within one-hour of what the employer recorded and paid the claimant for her work. The claimant's calendar entries for the week ending August 20, 2005 show she worked nineteen (19) hours, but she failed to report any earnings this week while claiming for benefits.

The administrative law judge reviewed the paycheck stubs provided by the claimant that reflect her earnings for most of the weeks during the audit review period. It is apparent that the claimant did report her "net" earnings rather than "gross" earnings for eight (8) of the ten weeks she incurred an overpayment.

The claimant was in New York, New York when the department issued the decision on March 7, 2006. The postal service forwarded the decision form her address of record in Sioux City. When the claimant received the decision, she filed an immediate appeal that is postmarked from New York on March 20, 2006, one business day after the appeal deadline.

## REASONING AND CONCLUSIONS OF LAW:

*The first issue is whether the claimant filed a timely appeal.*

### **Iowa Code Section 96.6-2 provides:**

2. Initial determination. Unless the claimant or other interested party, after notification or

within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from a decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The administrative law judge concludes that the claimant affected a timely appeal pursuant to Iowa Code section 96.6-2. The claimant established a good cause for the one-day delay in the submission of her appeal due to being outside the state of Iowa.

*The further issue is whether the claimant is overpaid benefits \$359, and if so, whether it is due to 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 further concludes that the claimant is overpaid benefits \$359.00 for the ten-weeks ending October 1, 2005, pursuant to Iowa Code Section 96.3-7. Although the claimant failed to report her work and wages for the week ending August 20, 2005, it appears that this was a good faith err, as the claimant consistently reported her other work and wages for the other weeks of the audit review period. Since the claimant consistently reported her net earnings in the week where she incurred some overpayment, there is no evidence of any deliberate attempt to miss-report earnings in order to receive a greater unemployment benefit.

The claimant requested a review of her personal calendar entries that recorded the days and hours worked during the audit review period. Within one-hour, the claimant's record matched the employer's

record for eight (8) of the ten (10) weeks the department determined an overpayment that was due to the claimant reporting her net earnings. The claimant's paycheck stubs supported the employer's wage report for each of the weeks submitted. Apparently, the claimant misunderstood the requirement to report net rather than gross earnings each week. The claimant has repaid the \$359 overpayment.

**DECISION:**

The Iowa Workforce Development Department decision of March 7, 2006, reference 06, is MODIFIED in favor of the claimant. The claimant affected a timely appeal. The claimant is overpaid benefits in the amount of \$359.00 that has been repaid, but is NOT due to misrepresentation.

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