

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

Appeal Number: 13IWDUI060
OC: 02/27/2011
Claim Ref. # (03)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JENNIFER A. POWERS
306 W NEVADA ST.
MARSHALLTOWN, IA 50158

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

JONI BENSON, IWD
IRMA LEWIS, IWD

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.

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.

Jean M. Davis

(Administrative Law Judge)

March 28, 2013

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

Section 96.16-4- Misrepresentation

STATEMENT OF THE CASE

The Appellant Jennifer Powers (hereinafter Appellant) filed an appeal from a decision dated January 18, 2013, reference 03, issued by the Respondent Iowa Workforce Development (hereinafter Respondent) which held that the Appellant was overpaid unemployment benefits in the amount of \$644.90, because her earned income was unreported. That decision also held that the unreported income constituted misrepresentation and that repayment would be required before any further

benefits could be paid to the Appellant and that the overpayment could be subject legal action to recover the amount overpaid.

The Appellant filed a timely appeal of the Department's adverse decision and requested a contested case hearing on the issues. This case was transmitted from Iowa Workforce Development to the Iowa Department of Inspections and Appeals for purposes of conducting the contested case hearing requested by the Appellant.

After due notice was issued, a hearing was held by telephone conference call on March 26, 2013 before Administrative Law Judge Jean M. Davis. The Appellant failed to appear for the hearing. The Respondent appeared for the hearing and was represented by Investigator Irma Lewis. Ms. Lewis testified at the hearing and also presented Exhibit A, which was received into evidence. Notice was also taken of the administrative file, which included the notice of decision issued by the Respondent and the Appellant's notice of appeal.

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 Appellant filed a claim for unemployment benefits with an effective date of February 27, 2011. The Appellant was determined to be eligible for benefits. At the commencement of her claim for benefits, the Appellant was provided with standard information from the Respondent instructing her that she had a duty to accurately report the receipt of earned income.

The Appellant worked for Pyramid Hospitality Team LLC during the time period of October 1, 2011 through November 19, 2011. During this period of time the Appellant had earned income as the result of her employment. The Appellant simultaneous receipt of unemployment compensation during a period of reported earned income submitted by her employer triggered a cross match in the Respondent's record keeping systems. As such, and as a part of federal Department of Labor requirements, the Respondent triggered an audit of the Appellant's claim for unemployment compensation benefits and began reviewing the earned income reported by the Claimant. The Department's audit was conducted by Ms. Lewis. The audit specifically reviewed the Appellant's earned income for the relevant time period.

As a part of the audit, Ms. Lewis requested and received reports of income paid to the Appellant by Pyramid Hospitality Team LLC. Ms. Lewis compared the employer's reports of wages paid to the Appellant with the information provided by the Appellant for the same time period. Ms. Lewis determined that the Appellant failed to report any of the earned income she received. On January 4, 2013, Ms. Lewis sent the Appellant a preliminary notice of audit findings requesting that the Appellant respond by January 16, 2013 if she disputed the information obtained during the preliminary audit. The Appellant failed to respond the preliminary audit notice sent by Ms. Lewis.

As a part of the audit conducted, Ms. Lewis determined that the Appellant failed to report any of the wages she received from Pyramid Hospitality Team LLC. In addition, Ms. Lewis determined that the Appellant filed her weekly benefit reports for relevant time period declaring that she did not have earned income for those weeks for which benefits were claimed. Based upon the actual earnings reported by Pyramid Hospitality Team, LLC, the Respondent determined that the Claimant had been over paid in unemployment compensation benefits in the amount of \$644.90. The Respondent also determined that the overpayment must be repaid before any further unemployment insurance compensation benefits would be paid to the Appellant and that the recovery of the overpayment may be subject to legal process.

REASONING AND CONCLUSIONS OF LAW:

The issues in this case are whether the Appellant is overpaid benefits \$644.90 and whether the overpayment arose due to misrepresentation by the Appellant.

Iowa Code section 96.3(7)(a) provides:

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.

Iowa Code section 96.3(7)(b)(1) further provides that 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.

Iowa Code section 96.16(4) provides:

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.

Based upon the evidence of record, and pursuant to Iowa Code Section 96.3(7), the Administrative Law Judge concludes that the Respondent correctly concluded that the Appellant was overpaid \$644.90 as she received unemployment insurance benefits to which she was not entitled. The evidence of record establishes that the Appellant worked for Pyramid Hospitality Team LLC during the time period for which the audit was conducted. The evidence further establishes that the Appellant failed to report her earnings. Indeed, the Appellant filed her weekly benefits reports denying that she had any earned income. The Appellant had an obligation to correctly report her income. The Department correctly determined that the Claimant was overpaid in the amount of \$644.90 and correctly determined that the overpaid resulted from the Appellant's misrepresentations concerning her earned income.

DECISION:

The decision of the representative dated January 18, 2013 is **AFFIRMED**.