

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

Appeal Number: 12IWDUI084
OC: 4/24/11
Claimant: Appellant (1)

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.**

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

KIMBERLY HILSENBECK
422 HUNTINGTON RIDGE RD.
CEDAR RAPIDS, IA 52402-7302

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
COREY WATT
150 DES MOINES STREET
DES MOINES IA 50309

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.

JOE WALSH, IWD

(Administrative Law Judge)

April 25, 2012

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Kimberly Hilsenbeck filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated January 6, 2012, reference 01. In this decision, the Department determined that Hilsenbeck was overpaid \$922 in unemployment insurance benefits for two weeks between October 30 and November 12, 2011. The decision states that the overpayment resulted from the claimant failing to report wages earned with TD&T Financial Group P.C.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on February 20, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on February 24, 2012. On March 23, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Corey Watt represented the Department and presented

testimony. Exhibits A through I were submitted by the Department and admitted into the record as evidence. The Appellant was provided instructions to participate in the hearing, but did not call in to do so. The hearing was held in her absence.

ISSUE

1. Whether the Department correctly determined that the Appellant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.
2. Whether the Department correctly determined that the overpayment was a result of misrepresentation.

FINDINGS OF FACT

Kimberly Hilsenbeck filed a claim for unemployment benefits with an effective date of April 24, 2011. Hilsenbeck made claims for and received unemployment benefits during the fourth quarter of 2011.

At some point after October 31, 2011, the Department received information indicating that Theobald Donohue & Thompson P.C. had hired Hilsenbeck as an employee. The Department generated an Employer Verification of Work form that was sent to the employer on November 10, 2011. The employer returned the form and indicated that Hilsenbeck had begun working for it on October 31, 2011. The employer reported that Hilsenbeck worked 40 hours in each of the weeks ending November 5, November 12, and November 19, 2011. During each of these weeks, Hilsenbeck earned \$1,442.30 in gross wages. (Exh. G).

Hilsenbeck called in a claim for unemployment insurance benefits for the weeks ending November 5 and November 12, 2011. During each of those weeks, Hilsenbeck reported that she did not work. Hilsenbeck's weekly benefit amount during this time period was \$461. (Exh. F; Watt testimony).

Based on the foregoing, the Department determined that Hilsenbeck was overpaid unemployment benefits in the amount of \$922. (Exh. F).

After determining the discrepancy between the amounts reported by Hilsenbeck and her employer for the weeks in question, the Department sent Hilsenbeck a preliminary audit notice on December 8, 2011. That notice advised her of the discrepancy and gave her an opportunity to respond by December 22, 2011. (Exh. E). In response to the preliminary audit notice, Hilsenbeck sent a letter to the Department on December 21, 2011. In her letter, Hilsenbeck asserts that she became eligible to receive unemployment insurance benefits effective April 28, 2011 after being laid off from employment in February, 2011 and exhausting her severance pay. Hilsenbeck asserts that she received 26 weeks of unemployment benefit payments during the 28-week period between May 1 and November 12, 2011. Hilsenbeck asserts that she does not agree she was overpaid as she was unemployed for 26 weeks and received 26 weeks of payments. Hilsenbeck then states, "I do agree that the claims were filed incorrectly for the weeks of November 1 –

November 12, as my employment with TD&T Financial Group began on October 31, 2011, as reported by Jill Brumbaugh. I am not sure how to go about correcting these discrepancies.” (Exh. D).

At hearing, Department investigator Corey Watt testified that the Department opened a claim for Hilsenbeck on April 24, 2011, but there was no indication that Hilsenbeck made any attempts to file a weekly claim for benefits until the benefit week of May 21, 2011. (Watt testimony).

On January 6, 2012, the Department issued a decision to Hilsenbeck notifying her that she was overpaid by \$922 as a result of misrepresentation.¹ (Exh. B). Hilsenbeck appealed the decision. In her appeal letter, Hilsenbeck asserts that she was unable to file claims for the weeks of May 7 and May 14, 2011, even though she was eligible for benefits and had documented her job search during that time period. Hilsenbeck asserts in the appeal letter that the automated system would only accept claims beginning the week of May 15, 2011. Hilsenbeck asserts that she has been unable to reach anyone who can help her to obtain benefits for the two weeks in May when she believes she was eligible for benefits. Hilsenbeck also notes that she believes the Department’s explanation for the January 6, 2012 decision is correct, but does not take into account the two weeks in May when she did not receive benefits to which she believes she was entitled. (Exh. A).

REASONING AND CONCLUSIONS OF LAW

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.² If a claimant is overpaid benefits as a result of misrepresentation, the Department may – in addition to recovering the overpayment through direct payment or deduction from future benefits – file a lien for the overpayment amount in favor of the state on the claimant’s real or personal property and rights to property.³

A. Overpayment

There is no dispute here that Hilsenbeck was overpaid unemployment insurance benefits for the two weeks between October 30 and November 12, 2011. Hilsenbeck herself admitted as much in her response to the Department’s preliminary audit notice and in her appeal of the Department’s January 6, 2012 decision. Additionally, the

¹ While the Department’s decision does not specifically state that the overpayment was the result of misrepresentation, the decision states that it was made under section 96.16(4) of the Iowa Code. That section relates to overpayments made as a result of misrepresentation and the consequences the Department may impose.

² Iowa Code § 96.3(7)(a) (2011).

³ 871 Iowa Administrative Code (IAC) 24.18.

evidence presented in the record supports the Department's overpayment finding. Consequently, the Department's decision that Hilsenbeck was overpaid in the amount of \$922 is affirmed.

B. Misrepresentation

A finding of misrepresentation is supported when an individual receives benefits while not eligible "by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact."⁴ In both her response to the preliminary audit notice and in her appeal letter, Hilsenbeck referenced her belief that she was not paid for a two-week period at the outset of her unemployment insurance claim in the spring of 2011. It is not entirely clear from Hilsenbeck's letters to the Department whether she claimed benefits during the time period from October 30 through November 12, 2011 as a self-help means of rectifying what she believed to be a mistake in payment during May, 2012. Hilsenbeck did not appear at hearing to shed any additional light on this issue.

Hilsenbeck has not denied that she was not entitled to benefits for the time period that she was overpaid and offered no explanation – beyond referencing the May benefits that she believes she was owed – for her reporting that she was not working after beginning her job with Theobald Donohue & Thompson on October 31, 2011. Under these circumstances, the Department's decision that the overpayment was a result of misrepresentation is correct and must be affirmed.

DECISION

Iowa Workforce Development's decision dated January 6, 2012, reference 01, is AFFIRMED. The claimant has been overpaid benefits in the amount of \$922 due to misrepresentation.

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⁴ Iowa Code § 96.16(4) (2011).