

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

Appeal Number: 09-IWDUI-170
09-IWDUI-171
OC: 12/09/07 and 12/07/08
Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**SARENTER SINGH
2000 E. VIRGINIA, APT. 5
DES MOINES, IA 50320**

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

DAN ANDERSON, 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.

(Administrative Law Judge)

September 9, 2009

(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Sarender Singh filed a timely appeal from two decisions issued by Iowa Workforce Development (the Department) dated July 13, 2009, reference 05 and 07. In the first decision, the Department determined that Ms. Singh was overpaid \$1,051 in unemployment insurance benefits between October 19, 2008 and December 6, 2008. In the second decision, the Department determined that Ms. Singh was overpaid \$1,882 in

unemployment insurance benefits between December 7, 2008 and February 28, 2009. Both decisions state that the overpayments occurred because of failure to report wages earned with Financial Tax Centres Inc. and Hy-Vee Inc.

The reason that the Department issued two decisions in this case is that the alleged overpayment occurred in two different benefit years. The claimant's first claim for benefits was effective December 9, 2007. A new benefit year began on December 7, 2008

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 10, 2009 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on August 11, 2009. On August 31, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Irma Lewis represented the Department and presented testimony. Appellant Sarender Singh appeared and presented testimony. Exhibits 1 through 8 were submitted by the Department and admitted into the record as evidence.

ISSUES

Whether the Department correctly determined that the claimant was overpaid unemployment insurance benefits and, if so, whether the amount of overpayment was correctly calculated.

Whether the Department correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

FINDINGS OF FACT

Sarender Singh filed a claim for unemployment benefits with an effective date of December 9, 2007. The benefit year expired on that claim and another claim was made with an effective date of December 7, 2008. Ms. Singh made claims for and received unemployment benefits during the fourth quarter of 2008 and the first quarter of 2009. Her weekly benefit amount during this time period was \$393.

IWD conducted a routine audit of Ms. Singh's unemployment claim for the fourth quarter of 2008. Hy-Vee and Financial Tax Centres both reported that Ms. Singh had earned wages in weeks in which she claimed unemployment benefits. The Department's records show that Ms. Singh failed to report wages in any of the weeks in question.

The following chart sets out the amounts claimed by Ms. Singh and reported by Hy-Vee and Financial Tax Centres, as well as the amount of benefits Ms. Singh received each week and the amount of benefits the Department believes Ms. Singh should have received if her wages were correctly reported for each of the weeks in question.

<i>Week ending</i>	<i>Reported by claimant</i>	<i>Reported by employers¹</i>	<i>Benefits rec'd</i>	<i>Benefits entitled</i>
10/25	\$0	\$166	\$393	\$352 ²
11/8	\$0	\$257	\$393	\$234
11/15	\$0	\$160	\$393	\$331
11/22	\$0	\$184	\$393	\$307
11/29	\$0	\$444	\$393	\$0
12/6	\$0	\$336	\$393	\$155
12/13	\$0	\$480	\$393	\$0
12/20	\$0	\$216	\$393	\$275
12/27	\$0	\$372	\$393	\$0
1/3	\$0	\$456	\$393	\$0
1/10	\$0	\$239	\$393	\$252
2/7	\$0	\$178	\$393	\$313
2/14	\$0	\$131	\$393	\$360
2/21	\$0	\$287	\$393	\$204
2/28	\$0	\$240	\$393	\$251

Based on the foregoing, the Department determined that Ms. Singh was overpaid a total of \$2,933 in unemployment insurance benefits: \$1,051 between October 19, 2008 and December 6, 2008 and \$1,882 between December 7, 2008 and February 28, 2009. (Exh. 2, 9).

After determining the discrepancy between the amounts reported by Ms. Singh and her employers, the Department sent Ms. Singh a preliminary audit notice on June 26, 2009. That notice advised her of the discrepancy and gave her an opportunity to respond. Ms. Singh had moved at some point prior to the Department sending the June 26 notice and the notice was not delivered to her until after the date set for a response. Ms. Singh did not respond to the Department's preliminary audit notice.

At some point during the time she was claiming unemployment benefits, Ms. Singh had difficulties with the automated claims reporting system. There was a six-week period during which the system did not register the claims that she made by phone. Ms. Singh went into her local Workforce Development center approximately three or four times to address this issue. It was finally resolved and she received a lump sum payment for six weeks of unemployment benefits. The lump sum payment covered the time period from the week ending December 27, 2008 through the week ending January 31, 2009. Ms. Singh acknowledged that the claim reporting problem lasted no longer than six weeks.

¹ The wages from 10/25, 11/8, 11/15, and 11/22 are from Hy-Vee. The wages from the remaining weeks are from Financial Tax Centres.

² The Department apparently transposed the numbers of this figure on its worksheet. Using the formula described in the Reasoning and Conclusions of Law section, Ms. Singh would have been entitled to only \$325 in benefits during this week.

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, IWD must recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD 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.³ If a claimant is overpaid benefits as a result of misrepresentation, IWD 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.⁴

A. *Overpayment*

Ms. Singh did not dispute at hearing that the wage information provided by Hy-Vee and Financial Centres was correct. Based on the information regarding Ms. Singh's wages for the weeks in question, she was overpaid benefits.

An individual who is partially unemployed may receive unemployment insurance benefits if she is working less than her normal full-time week for an employer and is earning less than her weekly benefit amount plus fifteen dollars.⁵ Ms. Singh, then, could have earned up to \$408 in a week and still received some amount of unemployment benefits. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant's wages in the week that exceed 25% of the weekly benefit amount.⁶

Using this formula, the Department correctly computed the overpayment amount for all but two weeks of the applicable time period. In the week ending December 6, the Department calculated the overpayment as \$283. Using the formula, the overpayment should have been \$238. In the week ending December 27, the Department calculated the overpayment as \$393. Using the formula, however, the overpayment should have been only \$119.

Additionally, the appellant was underpaid by \$38 in the week ending January 31, 2009. The Department did not deduct this amount from the proposed overpayment, as it should have done.

Taking into account these calculations, the total overpayment owed by Ms. Singh is \$2,576.

³ Iowa Code § 96.3(7)(a) (2009).

⁴ 871 Iowa Administrative Code (IAC) 96.16(4).

⁵ Iowa Code § 96.19(38)(b)(1) (2009).

⁶ 871 IAC 24.18.

B. Misrepresentation

Ms. Singh argued at hearing that the overpayment should not be deemed to have been caused by misrepresentation because the Department's automated claims reporting system malfunctioned for six weeks, causing wage information to be lost for those weeks. While Ms. Singh's testimony on this point was credible – and was, in fact, corroborated by the Department, which acknowledged there was a lump sum payment made for six weeks – Ms. Singh offered no explanation as to why no wages were reported during the remaining nine weeks for which the Department determined she was overpaid. Consequently, the Department's determination that the overpayment was a result of misrepresentation is affirmed.

DECISION

Iowa Workforce Development's decisions dated July 13, 2009 are MODIFIED. The claimant has been overpaid benefits in the total amount of \$2,576. The overpayment is due, at least in part, to misrepresentation.

lel