

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319-8082

**Appeal Number: 17IWDUI124
17IWDUI125**

OC: 02/14/16

Claimant: Appellant (02, 03)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**JANICE A. LYSNE
1120 – 2nd STREET NW
MASON CITY, IA 50401**

**MICHELLE SADDORIS, IWD AUDITOR
JONI BENSON, IWD
JODI DOUGLAS, IWD
NICHOLAS OLIVENCIA, IWD
EMILY CHAFA, UI APPEALS MANAGER**

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.

Charles B. Tarvin, Administrative Law Judge

December 9, 2016

(Dated and Mailed)

871 Iowa Administrative Code (IAC) section 24.2(1)"e" – Disqualification for failure to report.

871 IAC section 24.23(11) – Failure to meet availability requirements.

871 IAC section 26.8(1) – Withdrawal of Appeal

Iowa Code section 96.3(7) – Recovery of overpayment of benefits.

STATEMENT OF THE CASE

On August 10, 2016, Claimant/Appellant Janice A. Lysne filed the appeal from a decision letter issued by Iowa Workforce Development (IWD) on August 10, 2016, reference 02, disqualifying Lysne from receipt of unemployment benefits (UIB) effective August 7, 2016 for failure to meet with an IWD auditor.

On August 29, 2016, Lysne filed the appeal from a decision letter issued by IWD on August 24, 2016, reference 03, concluding that from February 14, 2016 to August 6, 2016, she received an overpayment (\$1,304.00) of unemployment insurance benefits (UIB) because she incorrectly reported wages earned.

On October 6, 2016, IWD transmitted the cases to the Iowa Department of Inspections and Appeals (DIA) to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Lysne.

On November 10, 2016, Administrative Law Judge Charles B. Tarvin convened the hearing. Lysne participated in the hearing. Michelle Saddoris and Stacey Brown appeared and testified on behalf of IWD. The judge admitted the IWD decision letters, appeal letters, IWD exhibits A1-E4 into the record.

ISSUES

1. Whether the department correctly determined that the claimant was ineligible to receive unemployment insurance benefits.
2. Whether the department correctly established and requested repayment of an alleged overpayment of unemployment insurance benefits.

FINDINGS OF FACT

On February 14, 2016, Lysne filed a claim for unemployment insurance benefits (UIB). IWD approved the claim. (exhibits B1, B2)

As early as February 2016, employer DS began operations in Iowa. (exhibit C6)

On or about February 29, 2016, Lysne began performing janitorial services through employer DS. Employer DS reportedly told Lysne that she was an independent contractor, that she need not report wages to IWD, and that she would be given a 1099 at the end of the year. (exhibits C2, C7)

In June 2016, IWD quality control randomly selected Lysne's claim for audit. It assigned Saddoris to complete the audit. (exhibit A1)

On July 6, 2016, Saddoris conducted a telephone interview with Lysne and completed a claimant questionnaire. (exhibit A4)

On July 12, 2016, Saddoris requested that IWD's misclassification unit determine whether employer DS and Lysne had an employer/employee relationship. (exhibit C2)

On August 4, 2016, Lysne completed a questionnaire for determining status of worker. (exhibit C7)

On August 4, 2016, IWD issued a letter scheduling a telephone interview with Lysne on August 9, 2016 at 8:30 a.m. to determine whether Lysne may have received an overpayment of UIB because of unreported wages earned with employer DS. Failure to report may result in a disqualification of UIB. IWD mailed the letter to Lysne's current address. (exhibit E1)

Saddoris unsuccessfully attempted to conduct the telephone interview with Lysne by calling her at the telephone number (-405) that Lysne provided on the following dates and at the following times:

- Aug 09, 16: 08:30.
- Aug 09, 16: 08:45.
- Aug 10, 16: 09:03. (exhibit E2, testimony of Saddoris)

On August 10, 2016, IWD issued a decision letter (reference 02) disqualifying Lysne from receipt of unemployment benefits (UIB) effective August 7, 2016 for failure to meet with the IWD auditor. (decision letter)

The following chart sets out the gross earnings reported by Lysne and the gross earnings that employer KS and/or employer DS reported during the weeks indicated, as well as the amount of benefits Lysne received each week and the amount of benefits that Lysne should have received if her gross earnings were as reported by the employer:

Wk ending	Reported by Claimant	Reported by Employer	UI Benefits Rec'd	Benefits entitled	Overpymt/ U/P
02/20/16	108.00	109.00	239.00	238.00	1.00
02/27/16	0.00	107.00	278.00	240.00	38.00
03/05/16	0.00	107.00	278.00	240.00	38.00
03/12/16	0.00	85.00	278.00	262.00	16.00
03/19/16	0.00	102.00	278.00	245.00	33.00
03/26/16	0.00	105.00	278.00	242.00	36.00
04/02/16	0.00	113.00	278.00	234.00	44.00
04/09/16	0.00	94.00	278.00	253.00	25.00
04/16/16	0.00	88.00	278.00	259.00	19.00
04/23/16	0.00	113.00	278.00	234.00	44.00
04/30/16	0.00	110.00	278.00	237.00	41.00
05/07/16	0.00	121.00	278.00	226.00	52.00
05/14/16	0.00	116.00	278.00	231.00	47.00
05/21/16	0.00	136.00	278.00	211.00	67.00
05/28/16	0.00	136.00	278.00	211.00	67.00
06/04/16	0.00	141.00	278.00	206.00	72.00
06/11/16	0.00	136.00	278.00	211.00	67.00
06/18/16	0.00	141.00	278.00	206.00	72.00
06/25/16	0.00	136.00	278.00	211.00	67.00
07/02/16	0.00	141.00	278.00	206.00	72.00
07/09/16	0.00	144.00	278.00	203.00	75.00
07/16/16	0.00	147.00	278.00	200.00	78.00
07/23/16	0.00	152.00	278.00	195.00	83.00
07/30/16	0.00	152.00	278.00	278.00	83.00
08/06/16	0.00	136.00	278.00	211.00	67.00
				Total	1,304.00

(exhibit D1-D4)

On August 24, 2016, IWD issued a decision letter (reference 03) in which it concluded that from February 14, 2016 to August 6, 2016, Lysne received an overpayment (\$1,304.00) of UIB because she incorrectly reported wages earned. (IWD decision letter)

On August 26, 2016, IWD issued decision letter(s) to employer DS and/or Lysne stating that an employer-employee relationship existed between employer DS and Lysne and employer DS was liable for UI contributions (tax) effective February 22, 2016. (exhibits C9, C10, testimony of Brown)

In late August 2016, Lysne began working for employer GS. She believed that she no longer was eligible to receive UIB and did not contact Saddoris to reschedule the telephone interview. (testimony of Lysne)

CONCLUSIONS OF LAW

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. See Iowa Code section 96.2.

An individual who is partially unemployed may receive unemployment insurance benefits if the individual is working less than the individual's normal full-time week for an employer and is earning less than the individual's weekly benefit amount plus fifteen dollars. 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. See 871 IAC section 24.18.

Disqualification for failure to report.

In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. See 871 IAC section 24.2(1)"e".

A claimant will be disqualified for being unavailable for work for failure to report as directed to workforce development in response to the notice which was mailed to the claimant. See 871 IAC section 24.23(11).

In the case at issue, on February 14, 2016, Lysne filed a claim for UIB. IWD approved the claim.

In June 2016, IWD quality control randomly selected Lysne's claim for audit. It assigned Saddoris to complete the audit.

On July 6, 2016, Saddoris conducted a telephone interview with Lysne and completed a claimant questionnaire. Lysne disclosed that since February 2016, she had been working as an "independent contractor" for employer DS.

On August 4, 2016, IWD issued a letter scheduling a telephone interview with Lysne on August 9, 2016 at 8:30 a.m. to determine whether Lysne may have received an overpayment of UIB because of unreported wages earned with employer DS. Failure to report may result in a disqualification of UIB. IWD mailed the letter to Lysne's current address.

Saddoris unsuccessfully attempted to conduct the telephone interview with Lysne by calling her at the telephone number (-405) that Lysne provided on the following dates and at the following times:

- Aug 09, 16: 08:30.
- Aug 09, 16: 08:45.
- Aug 10, 16: 09:03.

On August 10, 2016, IWD issued a decision letter (reference 02) disqualifying Lysne from receipt of UIB effective August 7, 2016 for failure to meet with the IWD auditor.

Lysne suggested that she had "justifiable cause" for failing to participate in the telephone interview with Saddoris on August 9, 2016 at 8:30 a.m. because Lysne did not receive the appointment letter until the afternoon of August 9, 2016.

In light of Lysne's participation in the appeal hearing on November 10, 2016, IWD agreed to unlock Lysne's February 14, 2016 unemployment claim retroactive to August 7, 2016. Lysne decided that she wished to withdraw Appeal #17IWDUI124. It is ORDERED that the appeal be considered withdrawn. See 871 IAC section 26.8(1)

Overpayment

Under Iowa law, if a claimant receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the claimant acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the claimant directly or by deducting the overpayment from any future benefits payable to the overpaid claimant. See 871 IAC section 25.8.

In the case at issue, as early as February 2016, employer DS began operations in Iowa. On or about February 29, 2016, Lysne began performing janitorial services through employer DS. Employer DS reportedly told Lysne that she was an independent contractor, that she need not report wages to IWD, and that she would be given a 1099 at the end of the year.

On August 26, 2016, IWD issued decision letter(s) to employer DS and/or Lysne stating that an employer-employee relationship existed between employer DS and Lysne and employer DS was liable for UI contributions (tax) effective February 22, 2016.

Even though Lysne acted in "good faith" when she failed to report her wages from employer DS for the week ending February 27, 2016 through the week ending August 6, 2016, IWD correctly established a claim for an overpayment of UIB received by Lysne.

For the week ending February 20, 2016, Lysne received \$109 in wages from employer KS and \$239 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$40. Deducting \$40 from her weekly benefit amount is \$238. Because Lysne was only entitled to receive \$238 in unemployment insurance benefits, she received an overpayment of \$1 for the week ending February 20, 2016.

For the week ending February 27, 2016, Lysne received \$107 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$38. Deducting \$38 from her weekly benefit amount is \$240. Because Lysne was only entitled to receive \$240 in unemployment insurance benefits, she received an overpayment of \$38 for the week ending February 27, 2016.

For the week ending March 5, 2016, Lysne received \$107 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$38. Deducting \$38 from her weekly benefit amount is \$240. Because Lysne was only entitled to receive \$240 in unemployment insurance benefits, she received an overpayment of \$38 for the week ending March 5, 2016.

For the week ending March 12, 2016, Lysne received \$85 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$16. Deducting \$16 from her weekly benefit amount is \$262. Because Lysne was only entitled to receive \$262 in unemployment insurance benefits, she received an overpayment of \$16 for the week ending March 12, 2016.

For the week ending March 19, 2016, Lysne received \$102 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$33. Deducting \$33 from her weekly benefit amount is \$245. Because Lysne was only entitled to receive \$245 in unemployment insurance benefits, she received an overpayment of \$33 for the week ending March 19, 2016.

For the week ending March 26, 2016, Lysne received \$105 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$36. Deducting \$36 from her weekly benefit amount is \$242. Because Lysne was only entitled to receive \$242 in unemployment insurance benefits, she received an overpayment of \$36 for the week ending March 26, 2016.

For the week ending April 2, 2016, Lysne received \$113 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$44. Deducting \$44 from her weekly benefit amount is \$234. Because Lysne was only entitled to receive \$234 in unemployment insurance benefits, she received an overpayment of \$44 for the week ending April 2, 2016.

For the week ending April 9, 2016, Lysne received \$94 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$25. Deducting \$25 from her weekly benefit amount is \$253. Because Lysne was only entitled to receive \$253 in unemployment insurance benefits, she received an overpayment of \$25 for the week ending April 9, 2016.

For the week ending April 16, 2016, Lysne received \$88 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$19. Deducting \$19 from her weekly benefit amount is \$259. Because Lysne was only entitled to receive \$259 in unemployment insurance benefits, she received an overpayment of \$19 for the week ending April 16, 2016.

For the week ending April 23, 2016, Lysne received \$113 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$44. Deducting \$44 from her weekly benefit amount is \$234. Because Lysne was only entitled to receive \$234 in unemployment insurance benefits, she received an overpayment of \$44 for the week ending April 23, 2016.

For the week ending April 30, 2016, Lysne received \$110 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$41. Deducting \$41 from her weekly benefit amount is \$237. Because Lysne was only entitled to receive \$237 in unemployment insurance benefits, she received an overpayment of \$41 for the week ending April 30, 2016.

For the week ending May 7, 2016, Lysne received \$121 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$52. Deducting \$52 from her weekly benefit amount is \$226. Because Lysne was only entitled to receive \$226 in unemployment insurance benefits, she received an overpayment of \$52 for the week ending May 7, 2016.

For the week ending May 14, 2016, Lysne received \$116 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$47. Deducting \$47 from her weekly benefit amount is \$231. Because Lysne was only entitled to receive \$231 in unemployment insurance benefits, she received an overpayment of \$47 for the week ending May 14, 2016.

For the week ending May 21, 2016, Lysne received \$136 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$67. Deducting \$67 from her weekly benefit amount is \$211. Because Lysne was only entitled to receive \$211 in unemployment insurance benefits, she received an overpayment of \$67 for the week ending May 21, 2016.

For the week ending May 28, 2016, Lysne received \$136 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$67. Deducting \$67 from her weekly benefit amount is \$211. Because Lysne was only entitled to receive \$211 in unemployment insurance benefits, she received an overpayment of \$67 for the week ending May 28, 2016.

For the week ending June 4, 2016, Lysne received \$141 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$72. Deducting \$72 from her weekly benefit amount is \$206. Because Lysne was only entitled to receive \$206 in unemployment insurance benefits, she received an overpayment of \$72 for the week ending June 4, 2016.

For the week ending June 11, 2016, Lysne received \$136 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$67. Deducting \$67 from her weekly benefit amount is \$211. Because Lysne was only entitled to receive \$211 in unemployment insurance benefits, she received an overpayment of \$67 for the week ending June 11, 2016.

For the week ending June 18, 2016, Lysne received \$141 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$72. Deducting \$72 from her weekly benefit amount is \$206. Because Lysne was only entitled to receive \$206 in unemployment insurance benefits, she received an overpayment of \$72 for the week ending June 18, 2016.

For the week ending June 25, 2016, Lysne received \$136 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$67. Deducting \$67 from her weekly benefit amount is \$211. Because Lysne was only entitled to receive \$211 in unemployment insurance benefits, she received an overpayment of \$67 for the week ending June 25, 2016.

For the week ending July 2, 2016, Lysne received \$141 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$72. Deducting \$72 from her weekly benefit amount is \$206. Because Lysne was only entitled to receive \$206 in unemployment insurance benefits, she received an overpayment of \$72 for the week ending July 2, 2016.

For the week ending July 9, 2016, Lysne received \$144 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$75. Deducting \$75 from her weekly benefit amount is \$203. Because Lysne was only entitled to receive \$203 in unemployment insurance benefits, she received an overpayment of \$75 for the week ending July 9, 2016.

For the week ending July 16, 2016, Lysne received \$147 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$78. Deducting \$78 from her weekly benefit amount is \$200. Because Lysne was only entitled to receive \$200 in unemployment insurance benefits, she received an overpayment of \$78 for the week ending July 16, 2016.

For the week ending July 23, 2016, Lysne received \$152 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$83. Deducting \$83 from her weekly benefit amount is \$195. Because Lysne was only entitled to receive \$195 in unemployment insurance benefits, she received an overpayment of \$83 for the week ending July 23, 2016.

For the week ending July 30, 2016, Lysne received \$152 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$83. Deducting \$83 from her weekly benefit amount is \$195. Because Lysne was only entitled to receive \$195 in unemployment insurance benefits, she received an overpayment of \$83 for the week ending July 30, 2016.

For the week ending August 6, 2016, Lysne received \$136 in wages from employer DS and \$278 in unemployment insurance benefits. Subtracting one-quarter (\$69.50) of her weekly benefit amount (\$278) from her wages is \$67. Deducting \$67 from her weekly benefit amount is \$211. Because Lysne was only entitled to receive \$211 in unemployment insurance benefits, she received an overpayment of \$67 for the week ending August 6, 2016.

In summary, the action of IWD establishing and requesting repayment of a claim (\$1,304) for an overpayment of unemployment insurance benefits received by Lysne from February 14, 2016 to August 6, 2016 is AFFIRMED. 871 IAC section 25.8.

DECISION

IWD's decision dated August 24, 2016, reference 03, is AFFIRMED

CBT