

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

GREGORY W STEWARD
8104 NORTH WALNUT CREEK
URBAN DALE IA 50322

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

DAN ANDERSON, IWD

Appeal Number: 04-IWDUI-229
OC: 03/28/04
Claimant: Appellant (4-R)

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)

December 30, 2004

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated December 1, 2004, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$432.00, because he failed to report or incorrectly reported his wages earned with QuikTrip Corporation for the 2-weeks ending May 1, 2004.

After due notice was issued, a hearing was held by telephone conference call on December 27, 2004. The claimant participated. Iowa Workforce Development, Investigation and Recovery

participated by Investigator, Lori Busma.

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 March 28, 2004. The department audited the claimant's claim for the second quarter of 2004 due to a cross match audit.

QuikTrip Corporation reported the claimant worked a 4-week period ending May 1, 2004, and the department compared this wage report against the claimant's claims for the same weeks. The employer reported the claimant had gross wages of \$61 for the week ending April 10, 2004, \$370 for the weeks ending April 17, April 24, and \$281 for the week ending May 1. The claimant reported wages of \$360 for the week ending April 17, \$160 for the week ending April 24, and no wages for the week ending May.

The department determined the claimant was overpaid benefits \$228 for the week ending April 24, and \$204 for the week ending May 1. Busma mailed a notice to the claimant regarding the \$432 overpayment on November 12, 2004 with the audit information.

The claimant went to his local office on November 15, and he submitted a statement to a department representative. The claimant explained that he last worked for his employer on April 23, 2004 that is the same day reported by the employer on the audit statement. The department records show that the employer reported paying to the claimant gross wages of \$712.05 that corresponds to the claimant's contention that he worked one training week for the employer (6 hours), and two additional weeks (\$61, \$370, \$281).

If one of the weeks reported by the employer that the claimant earned \$370 is eliminated, then the total wages for the remaining, three-weeks is \$712. If one \$370 week is eliminated, the overpayment is reduced from \$432 to \$121 (week ending April 24 – benefit paid \$228, entitlement is \$107).

The claimant was terminate by QuikTrip after a two-week trial period of employment, but there is no department record that this separation from employment was reviewed. Investigator Busma is requesting that this separation of employment issued by adjudicated by the department.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$432.00

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 concludes that the claimant is overpaid benefits \$107.00 for the week ending April 24, 2004 pursuant to Iowa Code Section 96.3-7. The employer's report to the department that the claimant earned gross wages of \$712.05 for the second quarter of 2004 does corroborate the claimant's testimony that he worked a training week (\$61), and two additional weeks (\$370, \$281) for the employer when his employment ended on April 24, 2004. The claimant was entitled to a benefit of \$107 for the week ending April 24 based on wages earned of \$281, and not the \$228 he was paid for that week. By eliminating one week of \$370 in gross wages, there is no other overpayment during the audit review period.

Investigator Busma noted that the department did not adjudicate any separation from employment issue for the claimant and the employer as to the last day worked on April 23, 2004. The administrative law judge further concludes that the claimant's separation of employment from QuikTrip Corporation on April 24, 2004 is remanded to claims for adjudication.

DECISION:

The decision of the representative dated December 1, 2004, reference 02, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$121.00. The separation of employment issue is REMANDED to claims for adjudication.

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