

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

Appeal Number: 06-IWDUI-196
OC: 11/13/05
Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

BERNARDINA RODRIGUEZ
8512 MADISON AVENUE
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STATE CLEARLY

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

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

October 27, 2006

(Decision Dated & Mailed)

Section 96.16-4 - Misrepresentation
Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated September 28, 2006, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$816.00, because she failed to report wages earned with Plaza Cleaners and David's Bridal for the 8- week period ending February 25, 2006.

After due notice was issued, a hearing was scheduled for a telephone conference call on October

23, 2006. The claimant participated with the assistance of Interpreter, Giovanna Carnet. Irma Lewis, Investigator, participated for Iowa Workforce Development, Investigation and Recovery.

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: The claimant filed a claim for unemployment benefits with an effective date of November 13, 2005. The claimant claimed for and received unemployment benefits during the first quarter of 2006.

The department audited the claimant's unemployment claim for the first quarter of 2006, and representatives of Plaza Cleaners and David's Bridal reported to the department the gross earnings paid to the claimant during the period from January 1, 2006 to February 25, 2006. The department compared the employer's wage report against the claimant's claims for the same weeks.

Plaza Cleaners reported it paid the claimant gross wages of \$118 (at a pay rate of \$11.75 per hour for ten hours) for each of the eight-weeks ending January 7, through February 25, 2006. David's Bridal reported it paid the claimant gross bi-weekly wages of \$307.80 for the two-weeks ending February 11, 2006, and \$747.90 for the two-weeks ending February 25, 2006. The claimant reported wages of \$108 for each of the eight-weeks ending February 25, 2006. Investigator Lewis divided the David's Bridal wages by applying half (\$154) to the week endings February 4, and February 11, and half (\$374) to the weeks ending February 18 and February 25.

The department audit concluded the claimant had an overpayment of \$10 for each of the four-weeks ending January 28, 2006, as the claimant reported ten dollars less than Plaza Cleaners for each of these weeks. Investigator Lewis added the David's Bridal wages of \$154 to the Plaza Cleaners wages of \$118 for the two-weeks ending February 11, 2006 for a total of \$272 for each week that reduced the claimant's entitlement from \$224 to \$60 for an overpayment of \$164 each week. Lewis added the David's Bridal wages of \$374 to the Plaza Cleaners wages of \$118 for the two-weeks ending February 25, 2006 for a total of \$492 each week that reduced the claimant's entitlement from \$224 to zero (\$0), for a total overpayment of \$224 each week.

Investigator Lewis mailed an audit notice to the claimant dated September 14, 2006 regarding the total overpayment of \$816 for the eight-weeks ending February 25, 2006. The claimant did not respond, and the department issued the overpayment decision based on misrepresentation.

The claimant reported the Plaza Cleaner wages of \$108 for each of the eight-weeks, because that was the amount of the paycheck she received each week. The claimant did not begin work at David's Bridal until February 6, 2006, and she worked twenty-eight hours for the week ending February 11, 2006 earning gross wages of \$308 at a pay rate of \$10.80 per hour. The claimant worked thirty-four hours for the weeks ending February 18, and February 25, 2006. The claimant did not report the David's Bridal wages, because she did not receive a paycheck until after the benefit reporting period ending February 25, 2006.

Based on the claimant's hearing statements, Investigator Lewis eliminated the David's Bridal wages from the week ending February 4, 2006 that reduced the overpayment from \$164 to \$10. Lewis applied the David's Bridal wages for the claimant in the amount of \$308 (for 28 hours) to the week ending February 11 that included the \$118 earned with Plaza Cleaners, for a total of \$426, which meant the claimant was not entitled to any benefit for that week (\$0 rather than \$60). After adjusting the two-weeks ending February 4 (from \$164 to \$0), and February 11 (from \$60 to \$0), Lewis concluded the net overpayment should be \$722, not \$816.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$816, and if so whether it is the result of misrepresentation.

Iowa Code Section 96.16-4 provides:

4. 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.

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 \$722 for the 8-weeks ending February 25, 2006 pursuant to Iowa Code section 96.3-7. The claimant made a good faith effort to correctly report her wage, but she made a mistake by reporting when she received her pay rather than when she earned her pay that is required by department rules. The claimant is overpaid benefits of \$10 for each of the five-weeks ending February 4, 2006, because she reported her net pay (paycheck pay) from Plaza Cleaners rather than the gross pay (before taxes) that is required by department rules.

The claimant is overpaid benefits of \$224 for each of the 3-weeks ending February 25, 2006, because she earned gross wages from Plaza Cleaners (\$118), and David's Bridal (\$308, \$374, \$374) for each week that exceeded her benefit allowance. The claimant confirmed that she worked 28, 34 and 34 hours for each of the 3-weeks at \$10.80 per hour for David's Bridal, and the department rules require that she report the pay when earned, not when she later received a paycheck.

DECISION:

The decision of the representative dated September 28, 2006, reference 02, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$722, but it is NOT due to misrepresentation.

rls