

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

Appeal Number: 09-IWDUI-098
OC: 8/17/08
Claimant: Appellant (1)

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.

DEB TIEMEYER
103 G STREET
HAMBURG IA 51640

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & 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)

June 17, 2009

(Decision Dated & Mailed)

Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE

Chronology:

Department decision: April 29, 2009.

Claimant's appeal: May 11, 2009 (Monday; May 9th is a Saturday).

Appeal received in Division of Administrative Hearings: May 14, 2009.

Notice of hearing issued: May 19, 2009.

Date of hearing: June 15, 2009.

Date of ALJ decision: June 17, 2009.

Claimant Deb Tiemeyer filed an appeal from an Iowa Workforce Development Department decision dated April 29, 2009, reference 09. The Department's decision held Claimant had been overpaid unemployment compensation in the amount of \$886. A hearing convened before Administrative Law Judge Thomas G. Becker on June 15, 2009. Claimant participated and testified. Investigator John Doidge represented the Department and testified. I took official notice of the administrative file without objection from either party.

ISSUES

Did the Department correctly decide Claimant had received overpayment of unemployment compensation in the amount of \$886?

Claimant contends the overpayment resulted from incorrect information given her by a Department representative.

DECISION

The Department's decision is AFFIRMED.

FINDINGS OF FACT

The Department approved Appellant Deb Tiemeyer for unemployment

compensation effective August 17, 2008. The Department pays benefits on a weekly basis. Like all claimants seeking to receive a weekly payment, Tiemeyer had to either call in to a central telephone exchange or log on to the Department's website at the end of the week, answer automated questions concerning whether she worked that week and, if so, report the wages she earned. Tiemeyer's weekly benefit entitlement varied depending on the wages she reported.

During the period in question, Tiemeyer had income from two sources: a teaching contract with the Hamburg Community School District, and Vicki R. Danley, Attorney at Law. Tiemeyer's contract with Hamburg was for services during the nine-month-long school year, but with payments made over the 12-month calendar year.

According to Tiemeyer, when she prepared to apply for unemployment in August 2008, she sought advice at the local Department office. She explained her situation to a Department representative and followed his instructions – or at least how she understood his instructions – in reporting her wages when calling in for approval of each weekly payment. Investigator Doidge doesn't dispute Tiemeyer's testimony, as he wasn't there during Tiemeyer's visit. But Doidge opined claimants often misunderstand that unemployment benefits are based on weekly wages regardless of other pay periods used by their employers.

During the period from the week ending September 6, 2008 through March 21, 2009, Tiemeyer called in weekly for benefit approval, reporting wages of varying amounts for each week, and receiving an unemployment benefit consistent with the wages she reported. Some weeks it was zero benefit. Other weeks, she received benefits ranging from \$79 to \$148. The weekly activity in Tiemeyer's account is summarized in an "Audit for Reported Wages" in the administrative file. Tiemeyer agrees the audit is accurate.

During a routine audit of Tiemeyer's account, Investigator Doidge obtained information from Hamburg and Danley on wages paid to Tiemeyer during this period. Doidge compared the employers' information to what Tiemeyer had reported each week. Some weeks she underreported her wages, resulting in an overpayment of unemployment benefits. Some weeks Tiemeyer overreported her wages, resulting in an underpayment of benefits. Over the 22 weeks in question, Tiemeyer received a net overpayment of benefits of \$886.

Tiemeyer agrees the employers' information on wages is accurate. She says her errors in reporting the wages resulting from the advice she received at the local Department office on how to report the wages from her Hamburg contract. The Department concedes Tiemeyer acted in good faith, but asserts an overpayment that Tiemeyer must repay.

CONCLUSIONS OF LAW

Iowa workers may receive unemployment compensation as provided in the Iowa Code.¹ The Director of the Iowa Department of Workforce Development is responsible for administering unemployment compensation with the power to adopt administrative rules.²

The Department may, in its discretion, recover any overpayment of benefits regardless of whether the recipient acted in good faith; recovery may be made by deduction from future benefits or the recipient's repayment.³ If the recipient received any payments due to misrepresentation, the Department is entitled to file a lien in the amount of the overpayment in favor of the state against any property owned by the recipient.⁴

For purposes of determining unemployment benefits, the Department defines "wages" to include compensation for services whatever the form of payment.⁵ "Wages" include both compensation that's paid and compensation that's earned but paid at a later date.⁶

ANALYSIS

Tiemeyer agrees all the information the Department used in calculating the overpayment is correct. Her only defense is she reported her wages the way the local Department representative advised. That may or not be accurate, although I found Tiemeyer to be a credible witness and I'm satisfied she followed the advice as she understood it.

¹ See, generally, IOWA CODE ch. 96.

² *Id.* § 96.11(1).

³ *Id.* 96.3(7)(a).

⁴ *Id.* 96.16(4).

⁵ 871 IOWA ADMIN. CODE 23.2(4).

⁶ *Id.* 23.2(2).

Tiemeyer's errors may have resulted from bad information from either her or the Department representative, a good-faith misunderstanding of the information stated by either, or a combination of these factors. No matter, as the Department is entitled to recoup a benefit overpayment regardless of the good faith of the parties. The point is to distribute employers' and workers' contributions as directed by law, regardless of who may be responsible for an error. Public assistance programs are complex matters and mistakes are common. The Department's recoupment rules are necessary to make sure funds go to the right people in the right amounts.

The Department established a net overpayment of \$886 for improperly paid unemployment compensation paid to Tiemeyer during the period from the week ending September 6, 2008 through the week ending March 31, 2009. The Department's decision to recover the overpayment is correct.

DECISION AND ORDER

The decision of the representative dated April 29, 2009, reference 09, is AFFIRMED.

tgb

cc: IWD Investigations & Recovery
Dan Anderson, IWD