

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

Appeal Number: 06-IWDUI-221
OC: 12/25/05
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.

**MARY ANN HEIDEN
2152 GRAND AVENUE #7
WEST DES MOINES IA 50265**

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.

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

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)

December 22, 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 November 22, 2006, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$1,777.00, because she incorrectly reported or failed to report wages earned with Ann Taylor Retail Inc. for the period from April 9, 2006 to July 1, 2006.

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

19, 2006. The claimant participated. 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 December 25, 2005. The claimant claimed for and received unemployment benefits during the first and second quarters of 2006. At the time the claimant filed her claim, she was working a part-time sales associate position at Ann Taylor.

The department audited the claimant's unemployment claim for the first quarter of 2006, and the department issued a decision that the claimant was overpaid benefits \$646. The claimant withdrew her right of appeal regarding the department decision (See 06-IWDUI-220).

Ann Taylor Retail Inc. reported to the department the gross earnings paid to the claimant during the period from April 9, 2006 to July 1, 2006. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department concluded that the claimant had a net overpayment that totaled \$1,777 based on eleven weeks of overpayments, and one week of under payment. Investigator Lewis mailed a notice to the claimant requesting that she report for an in-person interview regarding the overpayment. Lewis included in her mailing the employer audit reporting the claimant's wages earned, and the department application of those wages against the claimant's claim that determined the overpayment. Although the claimant contacted Lewis she chose to submit a written reply dated November 12, 2006 instead of reporting for an interview.

During the hearing, the claimant stated that she is not disputing the overpayment amount, and the record reflects that she has made some modest repayments. The claimant is disputing that she did anything intentional that caused the overpayment.

The claimant was paid an hourly rate as a sales associate, and she received a commission of 2% of gross sales, if she maintained a \$400 per hour sales rate during the course of any given sales month. The claimant would not know until the end of any month whether she met the hourly sales rate standard, and would be receiving a bonus commission. When the claimant did receive such a commission, she called a department representative about whether she had to report it. After discussing the issue, the claimant believed she was not required to report the end of a month commission. The claimant did report earnings in each of the weeks she was determined to have an overpayment of benefit.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$1,777, 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 \$1,777 for the eleven weeks ending July 1, 2006 pursuant to Iowa Code section 96.3-7. While the claimant erroneously reported her Ann Taylor earnings, it appears that most of the err was due to her failure to properly apply the monthly commission to the previous weeks in which it was earned. While an individual may not be required to report a bonus payment, an individual is required to report earned commissions during the week earned rather than paid.

The evidence does not establish that the claimant deliberately failed to report her monthly commissions in order to receive more benefits than what she was entitled to receive. While the claimant must repay the \$1,777 overpayment, it is not the result of misrepresentation.

DECISION:

The decision of the representative dated November 22, 2006, reference 03, is MODIFIED. The claimant is overpaid benefits \$1,777, but it is NOT due to misrepresentation.

rls