

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

Appeal Number: 09-IWDUI-189
OC: 05-28-08
Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

WILLIAM R. CURTIS
3732 W. WELLESLEY AVE
SPOKANE, WA 99205-1870

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

DAN ANDERSON, IWD

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)

September 21, 2009
(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

On August 18, 2009, William R. Curtis postmarked an appeal from a decision issued by Iowa Workforce Development (the Department) dated August 14, 2009, reference 02. In this decision, the Department determined that Mr. Curtis was overpaid \$372 in unemployment insurance benefits for the time period beginning from June 21, 2009 through June 27, 2009. The decision states that the overpayment resulted from the claimant failing to report wages earned with Holland Enterprises.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on August 31, 2009 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on September 1 2009. On September 21, 2009, a telephone appeal hearing was held before Administrative Law Judge Kerry Anderson. Investigator Karen VonBehren represented the Department and presented testimony. She submitted a packet of information which was marked as Exhibit 1 and which was admitted into the record. William Curtis appeared and presented testimony on his own behalf.

ISSUES

Whether IWD correctly determined that the claimant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.

Whether IWD correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

FINDINGS OF FACT

William Curtis filed a claim for unemployment benefits with an effective date of May 25, 2008. Mr. Curtis made claim for and received unemployment benefits in the amount of \$372 for the week June 27, 2009. This consisted of his regular weekly benefit amount of \$347 plus an additional \$25 available to Mr. Curtis through the American Recovery and Reinvestment Act of 2009.

Mr. Curtis began working for Holland Enterprises as a driver on June 21, 2009. He attended an orientation seminar for which he was paid \$150 on June 24, 2009. Mr. Curtis also made runs from Mapleton, North Dakota to Pelican Rapids, Minnesota and from Pelican Rapids to Lakeville Minnesota on that date for which he earned \$95.20. On the following day, Mr. Curtis began a run from Lakeville to Tucson, Arizona. That trip lasted five days and he was paid \$545.70 for the run.

Investigator Karen VonBehren audited Mr. Curtis' unemployment claim and compared the information supplied by Holland Enterprises as to Mr. Curtis' earnings against the earnings he reported for the same weeks. For the week ending June 27, Mr. Curtis reported that he had not worked. Holland Enterprises, on the other hand reported the earnings for orientation attendance and the runs set out above. Ms. VonBehren prorated the earnings for the Tucson trip for June 25, 26 and 27 resulting in earnings for the week in question of \$327.42. She then added the orientation pay and the earning for the other two runs and determined Mr. Curtis had actually earned a total of \$572.62 for the week. She therefore determined Mr. Curtis was not eligible for the regular unemployment benefits he received that week in the amount of \$347 or the \$25 stimulus payment he received under the American Recovery and Reinvestment Act.

Ms. VonBehren sent a Preliminary Audit Notice to Mr. Curtis informing him of the potential overpayment and giving him an opportunity to respond by August 10, 2009. Mr. Curtis did not respond. Therefore, Ms. VonBehren caused a decision to be issued on

August 14, 2009 holding Mr. Curtis had been overpaid benefits in the amount of \$372 because of a failure to report wages earned with Holland Enterprises. Ms. VonBehren made the determination under Iowa Code 96.16-4 which involves misrepresentation on the part of the claimant. Ms. VonBehren determined that Mr. Curtis had misrepresented his earnings because he failed to report he worked during the week in question and he failed to respond to the Preliminary Audit Notice. Ms. VonBehren pointed out that Mr. Curtis should have received a pamphlet when he filed for benefits explaining how to report earning and that when he called in to report he must have reported he was not working not that he had not been paid.

Mr. Curtis testified that he missed the deadline for submitted the paperwork to get paid on time when he first began with Holland and that he did not receive a check for two weeks after he began work. He testified he did not report he was working during that week because he did not get paid. Mr. Curtis further testified he did not respond to the Preliminary Audit Notice because he was on the road and did not receive the notice until after the response date.

REASONING AND CONCLUSIONS OF LAW

The issue is whether William R. Curtis has been overpaid benefits in the amounts of \$372 and, if so, whether the overpayment was the result of misrepresentation on Mr. Curtis' part.

Iowa law provides that the division of job service must recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.¹ If any benefits were received 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 benefits recipient.²

The evidence presented in this case shows conclusively that Mr. Curtis earned \$572 during the week in question. Mr. Curtis does not deny this; he argues that, while he may have earned those wages, he was not paid until two weeks later.

For purposes of unemployment insurance benefits, wages must be reported during the week they are earned, rather than the week in which they might be paid.³ Therefore, Mr. Curtis should have reported the \$572 he earned during the week ending June 27, 2009. Had he done so, he would not have received his regular unemployment benefits in the amount of \$347 nor the additional \$25 from the American Recovery and Reinvestment Act of 2009. This is because Mr. Curtis earned more than his weekly benefit amount plus \$15

1  96.3(7).

$$2 \frac{1}{2} \times 10^6 \text{ } 96.16(4).$$
[illegible]

during that week.⁴ Therefore, the department's determination that Mr. Curtis was overpaid benefits in the amount of \$372 must be affirmed.

The next question is whether the overpayment was due to misrepresentation on Mr. Curtis' part. While Ms. VonBehren's concerns have real merit, I find that Mr. Curtis simply misunderstood the difference between reported wages when earned as opposed to when paid. While he obviously answered the question as to whether he worked during the week erroneously, I find he did not do so with the intent of obtaining benefits to which he was not entitled. Rather, I find Mr. Curtis made a good faith error.

The law is clear. The department is charged with recovering all benefits paid in error regardless of the reason for the error. The department correctly determined that Mr. Curtis was overpaid benefits in the amounts of \$372 and its decision must be affirmed in that regard. However, under the facts of this case, there is not a preponderance of evidence to show Mr. Curtis knowingly misled the department as to his earnings. Therefore, the department's decision should be modified—the overpayment was not due to misrepresentation on his part.

DECISION

The department's decision dated August 14, 2009, reference 02 is MODIFIED. Claimant William R. Curtis has been overpaid benefits in the amounts of \$372. That overpayment, however, is not the result of misrepresentation on Mr. Curtis' part.

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⁴ 871 Ill. 24.2(1)(b); 871 Ill. 24.18.