

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

Appeal Number: 12-IWDUI-334-335
OC: 9/25/11
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

RAFAELA M. VIDAL
244 E. LIVINGSTON AVENUE
DES MOINES, IA 50315-1277

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
150 DES MOINES STREET
DES MOINES IA 50309

JOE WALSH, IWD
CARLA DENNIS, IWD
IRMA LEWIS, 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 27, 2012

(Decision Dated & Mailed)

Iowa Code Section 96.16(4) - Misrepresentation

Iowa Code Section 96.3(7) - Recovery of Overpayments

Iowa Code Section 96.4(3) – Work Search

STATEMENT OF THE CASE

Claimant Rafaela Vidal filed appeals from two Iowa Workforce Development decisions dated July 3, 2012, reference 02, and July 10, 2012, reference 03. The first decision held that she was not eligible to receive unemployment benefits from 4/1/12, until 6/9/12, because she did not perform adequate work searches. The second decision held that she had been overpaid unemployment benefits in the total amount of \$3,758.00, because she received benefits

during the period covered by the first decision. The second decision further held that the overpayment was due to Ms. Vidal's misrepresentation.

These cases proceeded to a hearing by telephone on September 26, 2012. Appellant Rafaela Vidal appeared pro se and testified. Investigator Irma Lewis appeared and testified for Iowa Workforce Development (IWD), Investigation and Recovery. The documents submitted by Ms. Lewis labeled Exhibits 1 through 6, entered the record.

FINDINGS OF FACT

The appellant was selected and participated in reemployment services as a condition of her unemployment benefits. At that appointment, the appellant did not bring her required work search verification. When the appellant later provided the verification, the case was referred to Ms. Lewis to investigate the veracity of the work search information. Ms. Lewis called all of the contacted employers listed by the appellant and found that none of the listed employers remembered the appellant, and none had her application for work. One employer stated that the appellant tried to remind her that they had met and talked earlier, but the employer told Ms. Lewis that this was not true. (Exhibit 2; Lewis testimony).

Ms. Vidal claimed and received unemployment insurance benefits from 4/1/12, until 6/9/12, in the amount of \$3,758. When making these claims she certified that all information provided was true. IWD mailed Ms. Vidal a copy of the rules of the program, and she also certified that she was in compliance with the rules when making claims for benefits. (Lewis testimony).

On July 3, 2012, IWD issued a decision, reference 02, finding that Ms. Vidal was not eligible to receive benefits from 4/1/12, until 6/9/12, due to her inadequate work search. On July 10, 2012, IWD issued another decision, reference 03, finding that MS. Vidal had been overpaid benefits due to the ineligibility noted in the first decision. This appeal followed. (Exhibits 1, 3; Lewis testimony).

IWD calculated an overpayment of \$3,758 for the ineligible period. (Exhibit 4; Lewis testimony).

The appellant testified that she misunderstood the work search requirements, possibly due to her language barrier. The appellant, a native Spanish speaker, speaks English as a second language. The appellant testified that she did make contact with all of the potential employers listed on her work search forms. However, she did not file any applications because none of the listed employers had any job openings. She did not know why they could not remember her contact, but stated that she made all of the listed contacts. ((Vidal testimony).

CONCLUSIONS OF LAW

Iowa law provides that an individual is disqualified from unemployment insurance benefits for any week in which the individual is not actively and earnestly seeking work. Iowa Code 96.4(3)

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. Iowa Code section 96.3(7). 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. Iowa Code section 96.16(4).

The evidence in this case demonstrates that the appellant did actively and earnestly seek work during the period in which she claimed and received unemployment benefits. Although the employers listed on the appellant's work search forms did not have her applications on file, the appellant explained that she believed that the requirement involved making contact with prospective employers and not necessarily filing an application. The fact that the employers did not remember the appellant is not probative. The appellant explained that the employers saw many applicants. The appellant testified credibly that she took her work search requirements seriously and tried to fulfill them.

Because the appellant did actively and earnestly seek work for the period at issue, she should not be disqualified from receiving unemployment insurance benefits. There is, therefore, no overpayment, and no misrepresentation.

DECISION

The decisions dated July 3, 2012, reference 02, and July 10, 2012, reference 03, are REVERSED. The claimant is eligible to receive unemployment insurance benefits and has not been overpaid benefits.

rhw