

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

Appeal Number: 05-IWDUI-009
OC: 02/01/04
Claimant: Appellant (1)

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.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

RUSSELL L COENEN
1305 HGIHWAY 5
CARLISLE IA 50047

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

DAN ANDERSON, IWD

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)

January 28, 2005

(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 December 30, 2004, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$82.00, because of misrepresentation in failing to report wages earned with State of the Arch Inc. (The Goodfeet Store) for the week ending May 15, 2004.

After due notice was issued, a hearing was held by telephone conference call on January 27, 2005. The claimant participated. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Cindy Stroud.

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 February 1, 2004.

A wage cross-match audit was done on the claimant's claim for the second quarter of 2004. A representative of the Goodfeet Store reported to the department that the claimant had gross wages of \$255 for the week ending May 15, 2004. The department compared the employer's audit report against the claimant's unemployment claim for the same week. The claimant reported wages of \$78, and he received a benefit of \$297. Based on the employer's report, the claimant should have received \$120 that causes an overpayment of \$177.

Investigator Stroud mailed a notice with audit information to the claimant on November 2, 2004 regarding the overpayment of \$177. The claimant challenged the wage report for the week at issue.

Stroud requested additional pay information from the employer, and she received a payroll journal that showed the claimant had gross earnings of \$160 for the pay period from May 9 to May 22, 2004, and a May commission check of \$90.66. Since the claimant last worked on May 10, Stroud considered the wages earned should be applied to the week ending May 15, but the commission check should be disregarded, as there was no way to determine how much of it may have been earned by work performed from May 1 to May 9, 2004.

Stroud revised the audit by reducing the claimant's gross earnings for the week ending May 15, 2004 from \$255 to \$160 that increased his benefit entitlement from \$120 to \$215, which meant his overpayment was reduced from \$177 to \$82. Stroud mailed her revised audit information to the claimant on December 2, 2004, and when the claimant did not respond, the department issued the decision.

The claimant reported \$78 for gross earnings the week ending May 15, 2004, but this is the amount of pay he received that week.

During the hearing, Stroud reviewed the claimant's claim history, and she noted that the claimant could offset and repay the \$82 overpayment by a future claim week in August 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$82, 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 \$82 for the week ending May 15, 2004 pursuant to Iowa Code section 96.3-7. The claimant made a good faith err by reporting the amount of pay he received from the employer for the week ending May 15, rather than the amount of pay he earned that week. The revised audit establishes that the claimant does have an \$82 overpayment based on him earning gross wages of \$160 for the week at issue.

Investigator Stroud will take administrative action regarding an August 2004 benefit week for the claimant to offset and repay the \$82 overpayment.

DECISION:

The decision of the representative dated December 30, 2004, reference 02, is AFFIRMED. The claimant is overpaid benefits \$82 due to a good faith reporting err. The department is going to take administrative action to offset and repay the overpayment.

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