

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

Appeal Number: 07-IWDUI-171
OC: 07/01/07
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.

**WILLIAM K SIMMONS
PO BOX 62
MARNE IA 51552-0062**

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 28, 2007

(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 28, 2007, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$2,189.00, because he failed to report wages earned with Holtz Service for the period from September 23, 2007 to November 10, 2007.

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

26, 2007. The claimant did not participate. John Doidge, Investigator, participated for Iowa Workforce Development, Investigation and Recovery.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of July 1, 2007. The claimant claimed for and received unemployment benefits during the second and third quarters of 2007.

The department audited the claimant's unemployment claim for the second and third quarters of 2007. A representative for Holtz Service & Small Engine LLC reported to the department the gross wages earned by the claimant during the period from when he started work on September 25, 2007 through the week ending November 10, 2007. The department compared the employer's wage report against the claimant's claims for the same weeks.

The employer representative reported the claimant worked hours and earned wages as follows: Week ending September 29, 2007 – 33 hours, \$330; October 6 – 40 hours, \$400; October 13 – 44.5 hours, \$701.25; October 20 – 35 hours, \$525; October 27 – 40 hours, \$600; November 3 – 12 hours, \$180; and week ending November 10 – 40.5 hours, \$611.

When the claimant filed unemployment claims for these seven weeks, he did not report any wages/earnings. The claimant was paid a benefit of \$373 for each week. Based on the employer's wage report, the claimant was entitled to a partial benefit of \$136 for the week ending September 29, and \$286 for the week ending November 3rd. Due to earning excessive wages, the claimant was not entitled to any benefit for the other five weeks.

Investigator Doidge mailed separate notices to the claimant on October 24, and November 15, 2007 regarding the \$1,356 overpayment for the 2007 second quarter, and \$833 overpayment for the 2007 third quarter. Doidge included the employer wage reports. The claimant did not respond to the first notice, but he did call in response to the second notice.

The claimant contends he worked as a consultant for Holtz Service and that he had a contract with it. Although Doidge requested a copy of the contract from the claimant, he did not receive one. Since the claimant failed to report his work and wages, Doidge concluded he misrepresented his claim.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$2,189, 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 \$2,189 for the 7-week ending November 10, 2007 pursuant to Iowa Code section 96.16-4. The claimant's employer reported his work to the department as hours worked and gross wages earned. It appears the claimant was paid at the rate of \$10 per hour for his first two-weeks, and then \$15 per hour (some overtime) for the next five weeks. While an unemployed individual may be self-employed and remain eligible for benefits, the claimant failed to provide satisfactory evidence to establish it.

DECISION:

The decision of the representative dated November 28, 2007, reference 03, is **AFFIRMED**. The claimant is overpaid benefits \$2,189.00 due to misrepresentation.

rls