

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

Appeal Number: 05-IWDUI-008
OC: 09/28/03
Claimant: Appellant (2)

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.***

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

REBECCA J DIEHN-WEBB
2218 TELEGRAPH ROAD
DAVENPORT IA 52804

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
INVESTIGATIONS 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)

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 29, 2004, reference 03, which held that the claimant was overpaid unemployment benefits in the net amount of \$191.70, because of misrepresentation in failing to report wages earned with Arrow Express for the week ending February 21, 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, Tom Carnahan.

FINDINGS OF FACT:

The administrative law judge, having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of September 28, 2003.

A wage cross-match audit was done on the claimant's claim for the first quarter of 2004. A representative of Arrow Express reported to the department that the claimant began employment on February 15, 2004, and she had gross earnings of \$299 for the week ending February 21, 2004. The department compared the employer's report against the claimant's unemployment claim for the same week.

The claimant claimed no wages for the week ending February 21, 2004, and she received an unemployment benefit of \$204. The department issued a decision that the claimant was overpaid due to the employer's wage audit report.

After the claimant filed an appeal, Investigator Carnahan rechecked with Arrow Express and he learned that it had erred in the initial audit report. The claimant applied for her job on or about February 18, 2004, and she had no earnings for the week ending February 21, 2004.

Investigator Carnahan proposed a stipulation that the claimant was not overpaid any benefit for the week ending February 21, 2004, as she had no earnings, and she was entitled to the benefit she received. Carnahan further proposed that the overpayment be rescinded, and the department decision be reversed. The claimant agreed to the proposed stipulation.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$191.70, 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 NOT overpaid benefits \$191.70 for the week ending February 21, 2004 pursuant to Iowa Code section 96.3-7. The claimant's employer erred by reporting wages for the claimant in a week she did not work. The parties agreed to a stipulation of fact regarding the employer's err and a reversal of the overpayment.

DECISION:

The decision of the representative dated December 29, 2004, reference 03, is REVERSED. The claimant is NOT overpaid benefits \$191.70.

rls