

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

LINDA J JESME
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LEMARS IA 51031

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

DAN ANDERSON, IWD

Appeal Number: 04-IWDUI-191
OC: 05/04/03
Claimant: Appellant (4)

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)

October 29, 2004

(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 September 29, 2004, reference 04, which held that the claimant was overpaid unemployment benefits in the amount of \$228.00, because of misrepresentation in failing to report or correctly reporting wages earned with G. L. Repair for the week ending March 6, 2004.

After due notice was issued, a hearing was held by telephone conference call on October 25, 2004. The claimant participated. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Larry Finley.

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 May 4, 2003.

A wage cross-match audit was done on the claimant's claim for the first quarter of 2004. A representative of G. L. Repair responded to the department audit by reporting the hours worked and gross wages earned by the claimant for the weeks ending March 6, and March 13, 2004. The department compared the employer's report against the claimant's benefit payment record for the same weeks.

The employer reported the claimant had gross earnings of \$162 for the week ending March 6, and \$412 for the week ending March 13, 2004. The claimant claimed wages of \$150 and \$68 for the same weeks, and she received a benefit of \$228 and \$303. Based on the employer's wage report, the claimant should have received a benefit of \$216 for the week ending March 6, and no benefit for the subsequent week.

Investigator Finley mailed a notice with the department audit information to the claimant regarding the \$315 overpayment on August 26, 2004. The claimant submitted a fax response disputing the overpayment.

Finley mailed an employer re-check and verification of wage form to the employer. Greg Lammers, Owner of G.L. Repair signed and submitted the form to Finley correcting the wages earned by the claimant for the week ending March 6, 2004 from \$162 to \$339, and for the week ending March 13, from \$412 to \$68.

Finley accepted the corrected wage information that causes the claimant to be overpaid benefits \$228 for the week ending March 6, 2004 due to earning excessive wages. However, since the claimant and the employer agree that she earned \$68 for the week ending March 13, there is no overpayment for that week. Finley reduced the overpayment from \$315 to \$228, and the department issued the decision.

Finley requested in the hearing to withdraw misrepresentation as a consideration for the overpayment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$228, 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 \$228 for the week ending March 6, 2004 due to earning excessive wages pursuant to Iowa Code section 96.3-7. The department corrected the overpayment during the audit process after receiving a verified wage report from the employer that established her wages earned for the week at issue to be excessive, which disqualified her from receiving the \$228 benefit. The claimant did not have any personal records to dispute the corrected wage report submitted by the employer. The department requested to withdraw misrepresentation from this case.

DECISION:

The decision of the representative dated September 29, 2004, reference 04, is MODIFIED in favor of the claimant. The claimant is overpaid benefits \$228, but it is not due to misrepresentation.

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