

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

Appeal Number: 11-IWDUI-152-154
OC: 3/14/10

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.

**KUMAR PRASHANT
3108 PEACHTREE LANE
MUSCATINE, IA 52761**

STATE CLEARLY

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

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.

JOE WALSH, IWD

(Administrative Law Judge)

July 21, 2011

(Decision Dated & Mailed)

Section 96.4(3) - Availability for work
Section 96.3(7) - Recovery of Overpayments
Section 96.6(2) - Timely Appeal

STATEMENT OF THE CASE

Claimant Kumar Prashant was the subject of three Iowa Workforce Development decisions. The first, dated February 9, 2011, reference 01, found him ineligible for unemployment insurance benefits from March 14, 2010, through March 20, 2010, because he was not available for work. The second decision, dated March 25, 2011, reference 02, found that he was overpaid \$412 for that same week because he was unavailable for work. The third decision, also dated March 25, 2011, reference 03, found that he was overpaid \$278 for a

four week period between March 21, 2010, and October 2, 2010, because he failed to correctly report wages earned with Hon Company. The decisions did not allege that the overpayments were due to Mr. Prashant's misrepresentation.

These cases proceeded to a hearing by telephone on July 20, 2011. Appellant Kumar Prashant appeared pro se and testified. Investigator Judy Gilkison appeared and testified for Iowa Workforce Development (IWD). The packet of documents submitted by Ms. Gilkison labeled Exhibits 1 through 15, entered the record without objection.

FINDINGS OF FACT

At the hearing in these matters Mr. Prashant confirmed that he only appealed two of the three decisions that involved him. His written appeal request stated that he wanted to appeal "ref 02 and 03." This written appeal request, dated and received on March 31, 2011, timely appealed these two decisions, both dated March 25, 2011. Mr. Prashant clarified that he did not intend to appeal the decision dated February 9, 2011. Indeed, his written request would not have been timely with respect to this decision.

The first of the two IWD decisions with the same date resulted from Mr. Prashant's trip to India to care for his father. Mr. Prashant has worked for Hon Company since 2005. He took leave from his job with Hon pursuant to the federal family leave act. Mr. Prashant arranged for leave from January 31, 2010, until March 21, 2010. When his father's condition improved, he returned early, but did not notify Hon. Prior to returning to work on March 21, 2010, he filed a claim for unemployment insurance benefits on March 14, 2010, for the week prior to returning to work at Hon. That claim was initially approved, and Mr. Prashant received benefits in the amount of \$412. (Exhibits 5, 6). Mr. Prashant stated that he filed for unemployment because someone at Hon told him that he was eligible while on leave. He stated further that he would not have gone back to work prior to March 21, 2010, if Hon had asked. (Exhibit 5; Prashant testimony).

IWD discovered this situation and issued a decision dated February 9, 2011, reference 01, finding Mr. Prashant ineligible for benefits for the week of March 14 through March 20, 2010, because he was not available for work. (Exhibit 2). Mr. Prashant did not appeal that decision. (Exhibit 13; Prashant testimony).

IWD issued another decision regarding this week on March 25, 2011, reference 02. That decision found that Mr. Prashant's ineligibility for that week meant that he had been overpaid benefits. (Exhibit 3). Mr. Prashant did not dispute his receipt of these benefits or IWD's calculation of the amount of \$412. (Exhibits 6, 7; Prashant testimony).

IWD also discovered a discrepancy in the amount of earnings reported by Mr. Prashant and those earnings reported by Hon Company for the weeks ending on March 27, 2010, May 22, 2010, September 25, 2010, and October 2, 2010. The wages reported by Mr. Prashant resulted in an overpayment of benefits in the amount of \$278. (Exhibit 8; Gilkison testimony).

Mr. Prashant explained the discrepancy in a written statement of fact. (Exhibit 9). He stated that he followed the advice of a co-worker and did not report his shift differential or incentive pay for the weeks in question. He further stated, "I understand that I have an overpayment

for not reporting my wages in full. ((Exhibit 9; Prashant testimony)).

CONCLUSIONS OF LAW

Iowa Code section 96.6(2) requires an appeal to be filed within ten days of an IWD decision. Mr. Prashant's appeal request was signed and received by IWD on March 31, 2011. The appeal is timely with respect to the two decisions dated March 25, 2011, reference 02 and 03. The appeal request is not timely with regard to the decision dated February 9, 2011, and that decision became final by operation of the statute.

The remaining issues involve whether Kumar Prashant has been overpaid benefits in the amount of \$412 for the week of March 14 through March 20, 2010, and overpaid benefits in the amount of \$278 for the period between March 27, 2010, and October 2, 2010.

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.¹ 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.²

The uncontested evidence in this case demonstrates Kumar Prashant did receive overpayment of unemployment benefits in the amounts alleged. Mr. Prashant freely admitted the receipt of these benefits and the fact that he was not entitled to them. The failure to timely appeal the February 9, 2011, determination of ineligibility is dispositive of the overpayment of \$412, and Mr. Prashant admitted the overpayment of \$278 in writing. He did not challenge the amount in either case. Rather, Mr. Prashant made it known that he did not intend to defraud the program, but relied on advice from Hon personnel in both the filing of a claim while on leave and the non-reporting of some income. He advocated for better education of company personnel so that employees would receive better advice.

DECISION

The two decisions dated March 25, 2010, reference 02 and reference 03, are AFFIRMED. The claimant has been overpaid benefits in the amount of \$412 and \$278 respectively. There is neither allegation nor evidence of misrepresentation.

rhw

¹ Iowa Code section 96.3(7).

² Iowa Code section 96.16(4).