

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

TANYA RANDLE
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CORALVILLE IA 52739-0051

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

Dan Anderson, IWD

Appeal Number: 09-IWDUI-141
OC: 6/15/08
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)

July 30, 2009

(Decision Dated & Mailed)

Section 96.3(7) – Recovery of Overpayments

Section 96.16(4) – Misrepresentation

STATEMENT OF THE CASE

Chronology:

Department decision: June 23, 2009.

Claimant's appeal: June 26, 2009 (postmarked).

Appeal received in Division of Administrative Hearings: July 9, 2009.

Notice of hearing issued: July 13, 2009.

Date of hearing: July 23, 2009.

Date of ALJ decision: July 30, 2009.

Claimant Tanya Randle filed an appeal from an Iowa Workforce Development Department decision dated June 23, 2009, reference 01. The Department's decision held Claimant had been overpaid unemployment compensation in the amount of \$1205 for the weeks between June 29 and September 20, 2008. A telephone hearing convened before Administrative Law Judge Thomas G. Becker on June 12, 2009 after due notices. Claimant did not appear. No one from the Department appeared. I took official notice of the administrative file and considered the appeal based on those documents.¹

ISSUES

Did the Department correctly decide Claimant had received overpayment of unemployment compensation in the net amount of \$1205?

Was any overpayment the result of Claimant's misrepresentation?

Claimant's appeal letter disputes that she received an overpayment.

¹ See 871 IOWA ADMIN. CODE 26.14(6),(7) (if one or more parties fail to appear at an in-person or telephone hearing, the presiding officer may proceed with the hearing).

DECISION

The Department's decision is AFFIRMED in part and REVERSED in part. The overpayment decision was correct, but it was not the result of Claimant's misrepresentation.

FINDINGS OF FACT

Claimant's unemployment compensation history:

The Department approved Claimant Tanya Randle for unemployment compensation effective June 15, 2008. The Department pays benefits on a weekly basis. I take official notice that, like all claimants seeking to receive a weekly payment, Randle had to either call in to a central telephone exchange or log on to the Department's website at the end of the week, answer automated questions concerning whether she worked that week and, if so, report the wages she earned. Any wages would have been deducted from Randle's unemployment benefit according to a formula set out in Department rules.

Each week from June 29 through September 20, 2008, Randle would have called or logged in and, each time, reported she hadn't worked and received no wages. As a result, Randle received \$299 in unemployment benefits each of those weeks, for a total of \$4186 for that 14-week period.

The Department's audit and decision:

During a routine audit of Randle's account, the Department learned Randle's former employer, Tyson Fresh Meats, had paid Randle a total of \$1730 wages during the weeks June 29 through September 20, 2008. The amounts varied week to week during that period. Sometimes the week's wages exceeded Randle's unemployment benefit, sometimes the wages were less than her benefit, and some weeks there were no wages. Any week where wages exceeded Randle's benefit by more than \$15, the Department determined no benefit payment should have been approved. In the weeks where wages were less than the benefit plus \$15, the Department determined Randle's approved payment should have been reduced. The Department applied a deduction formula and determined there was a total overpayment to Randle during those 14 weeks of \$1205.

The Department sent Randle a notice of this apparent overpayment and set up an appointment at the local Department office to discuss the discrepancy. Randle didn't show up for the appointment. The file has no information on whether she called in or otherwise responded to the notice.

The Department sent Randle a Notice of Decision (NOD) informing her of a benefit overpayment of \$1205. The NOD also referenced the Iowa Code provision for overpayments resulting from a claimant's misrepresentations. Randle filed a timely appeal.

Claimant's evidence:

Randle's appeal letter denies receiving any wages from Tyson during the period stated. She says she was off work then because of a diagnosis of colon cancer. According to her letter, Randle was diagnosed in May 2008 and underwent surgery to remove part of her colon in September 2008.

CONCLUSIONS OF LAW

Iowa workers may receive unemployment compensation as provided in the Iowa Code.² The Director of the Iowa Department of Workforce Development is responsible for administering unemployment compensation with the power to adopt administrative rules.³

For purposes of determining unemployment benefits, "wages" include compensation for services whatever the form of payment, with exceptions not pertinent here.⁴

Someone who is partially unemployed may earn weekly wages equal to the individual's weekly unemployment benefit plus \$15 before being disqualified for unemployment compensation.⁵ If the person earns less than the weekly unemployment benefit amount plus \$15, the benefit payment is reduced by an amount equal to the person's weekly benefit less that part of wages earned that

² See, generally, IOWA CODE ch. 96.

³ *Id.* § 96.11(1).

⁴ *Id.* § 96.19(41); 871 IOWA ADMIN. CODE 23.2(4).

⁵ 871 IOWA ADMIN. CODE 24.18.

week (rounded to the nearest dollar) in excess of one-fourth of the individual's weekly benefit amount.⁶

The Department may, in its discretion, recover any overpayment of benefits regardless of whether the recipient acted in good faith; recovery may be made by deduction from future benefits or the recipient's repayment.⁷ If the recipient received any payments 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 recipient.⁸

Presiding officers in Department contested case proceedings must base their decisions on "the kind and quality of evidence upon which reasonably prudent persons customarily rely for the conduct of their serious affairs. . . ."⁹

ANALYSIS

Overpayment:

The file shows Tyson reported wages paid to Randle during the period in question. The Department applied the correct formula in considering the wages and calculating the overpayment. Notwithstanding Randle's denial of receiving any wages from Tyson during this time, I find the official record persuasive. The Department's determination of a \$1205 overpayment was correct.

Misrepresentation:

The administrative file alone is not persuasive that the overpayment was the result of Randle's misrepresentation. Randle's letter is adamant she received no wages from Tyson during the period set out in the Department's NOD and provides a facially credible reason why that can't be so. While the official record indicates Randle is wrong about that, there are many possible explanations for a mistaken belief that she hadn't earned wages during that time.

⁶ *Id.* See also IOWA CODE § 96.3(3) (authorizing benefits for partial unemployment and establishing formula), 96.4 (required eligibility findings), 96.19(38) ("total and partial unemployment" defined).

⁷ IOWA CODE § 96.3(7)(a).

⁸ *Id.* § 96.16(4).

⁹ 871 IOWA ADMIN. CODE 26.17(1)(b).

It would have been nice if a Department worker had responded to the Notice of Telephone Hearing and testified. Without testimony explaining the evidence the Department used to base its finding of misrepresentation, I don't have "the kind and quality of evidence upon which reasonably prudent persons customarily rely for the conduct of their serious affairs," as required by Department rule, to support a finding Randle had made deliberate misrepresentations to obtain the overpayment. Accordingly, I must conclude otherwise.

DECISION AND ORDER

The decision of the representative dated June 23, 2009, reference 01, is modified as follows. The decision that Claimant received an overpayment of \$1205 is AFFIRMED. The decision that the overpayment resulted from Claimant's misrepresentation is REVERSED.

tgb

cc: IWD Investigations & Recovery