

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

**Appeal Number: 08-IWDUI-052**  
**OC: 03/25/07**  
**Claimant: Appellant (1)**

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**VICKI R MORRIS**  
**2112 S 12<sup>TH</sup> STREET**  
**BURLINGTON IA 52601-3541**

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

DAN ANDERSON, IWD

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

April 25, 2008

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(Decision Dated & Mailed)

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Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated April 1, 2008, reference 01, which held that the claimant was overpaid unemployment benefits in the amount of \$149.00, because she incorrectly reported wages earned with Burlington Care Center during a seven-week period between July 8, 2007 to September 29, 2007.

After due notice was issued, a hearing was held by telephone conference call on April 23, 2008.

The claimant participated. Iowa Workforce Development, Investigation and Recovery, participated by Karen von Behren, Investigator.

**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 that: The claimant filed a claim for unemployment benefits with an effective date of March 25, 2007. The claimant claimed for and received benefits during the third quarter of 2007.

The department audited the claimant's unemployment claim for the third quarter of 2007, because she was earning wages from an employer at the time she was filing claims. A Burlington Care Center representative returned an audit form to the department that showed the claimant's bi-weekly earnings during a period from July 1, 2007 to September 29, 2007.

Investigator von Behren broke-down the bi-weekly earnings to a weekly period by dividing the gross amount in half, and applying an equal amount for each week. The Investigator learned that in addition to an hourly pay rate that increased for Saturday/Sunday work, the claimant would receive a bonus amount when she worked for another co-employee. Since the bonus pay was based on the claimant's work performance in the period she was reporting earnings and claiming for unemployment benefits, the pay was considered as wages in the week it was earned.

Investigator von Behren determined the claimant had some modest overpayments in each of seven weeks of the audit period ranging from a low of \$2 to a high of \$53 that totaled \$149. The claimant responded to the department audit notice and reviewed the overpayment matter with von Behren. The claimant did not report the bonus pay, because she believed that it should not be considered as regular wages, and she objects to the overpayment for that reason.

The hearing was scheduled for April 29, but the claimant reported to Investigator von Behren's office to review this matter on April 23, and agreed to hold the hearing at this earlier date.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant is overpaid benefits \$149.00.

**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.

**871 IAC 24.13(4) *Nondeductible payments from benefits.*** The following payments are not considered as wages and are not deductible from benefits:

b. Bonuses. The bonus payment is **only** (emphasis added) non-deductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

The administrative law judge concludes that the claimant is overpaid benefits \$149.00 for a 7-week period during the third quarter of 2007 pursuant to Iowa Code Section 96.3-7. The claimant disputed that her bonus pay should be considered as wages and counted against her unemployment. Investigator von Behren correctly applied the department rule cited above that makes any bonus pay earned in the period while an individual is claiming benefits part of wages that must be reported and considered in the week that it is earned. The overpayment is attributable to the un-reported bonus earned by working for another employee that is more like the differential pay the claimant received for working weekends than a bonus for work performance.

The department is not claiming that the claimant intentionally failed to report her wages, but even though the claimant is not at fault, she is required to repay the overpaid benefits.

DECISION:

The decision of the representative dated April 1, 2008, reference 01, is AFFIRMED. The claimant is overpaid benefits \$149.00.

rls