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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

CHAD THEDE
314 PINE AVE.
NORWALK, IA 50211

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

DAN ANDERSON, IWD

Appeal Number: **09-IWDUI-150**
OC: 11/02/08
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.

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(Administrative Law Judge)

November 12, 2009
(Dated and Mailed)

Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits
Iowa Code section 96.16-4 – Misrepresentation

STATEMENT OF THE CASE

Chad Thede filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated July 10, 2009, reference 01. In this decision, the Department determined that Mr. Thede was overpaid $2,334 in unemployment insurance benefits for six weeks between November 9, 2008 and December 20, 2008. The decision states that the overpayment resulted from the claimant incorrectly reporting severance pay from Dice Career Solutions.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 22, 2009 for scheduling of a contested case hearing. A hearing was originally scheduled for August 10, 2009. On that date, Chad Thede did not call in to participate in the hearing. David Eklund, representing the Department, did call in to participate and the hearing was held in Mr. Thede's absence. Mr. Eklund presented testimony.

Shortly after the hearing ended, Mr. Thede called in to report that he missed the hearing owing to having received the notice late because of difficulties receiving mail and requesting the opportunity to participate. Pursuant to 871 Iowa Administrative Code 26.14(7)(b), an order was issued granting Mr. Thede's request to reopen the record. A new Notice of Hearing was issued on August 19, 2009 with a hearing date of September 4, 2009 at 1:00 PM.

On August 19, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Claimant Chad Thede appeared and presented testimony. No representative from the Department appeared. Exhibits 1 through 6, which were contained in the administrative file, were admitted into the record as evidence.

ISSUES

Whether the Department correctly determined that the claimant was overpaid unemployment insurance benefits and, if so, whether the overpayment was correctly calculated.

Whether the Department correctly determined that an overpayment was the result of misrepresentation on the part of the claimant.

FINDINGS OF FACT

Chad Thede filed a claim for unemployment benefits with an effective date of November 2, 2008. Mr. Thede made claims for and received unemployment benefits during the fourth quarter of 2008. His weekly benefit amount at that time was $389. (Exh. 2).

The Department conducted an audit of Mr. Thede's unemployment claim for the fourth quarter of 2008. Dice Career Solutions reported pay to Mr. Thede from the week ending November 8, 2008 through the week ending January 3, 2009. The Department compared that information with Mr. Thede's weekly unemployment claims for the same time period. The following chart sets out the amounts claimed by Mr. Thede and reported by Dice Career Solutions in weeks where there was a discrepancy, as well as the amount of benefits Mr. Thede received each week and the amount of benefits the Department believes Mr. Thede should have received if his wages were correctly reported.

Week ending	Reported by claimant	Reported by employer	Benefits rec'd	Benefits entitled
11/8/08	$999	$1,326	$0	$0
11/15/08	$0	$1,609	$389	$0
11/22/08	$0	$1,609	$389	$0
11/29/08	$0	$1,609	$389	$0
12/6/08	$0	$1,609	$389	$0
12/13/08	$0	$1,609	$389	$0
12/20/08	$0	$1,408	$389	$0

(Exh. 2).

Dice Career Solutions reported that the pay received by Mr. Thede from the week ending November 15, 2008 through the week ending December 20, 2008 was non-regular pay with a code of "3". There is no evidence in the record to indicate what non-regular pay code 3 denotes. There are, however, handwritten notes on the Preliminary Audit Notice and the Crossmatch Audit Worksheet submitted by the Department that state "severance."

Mr. Thede received a lump sum severance payment from Dice Career Solutions when his employment ended there on November 6, 2008. The severance payment he received was equivalent to six weeks' worth of pay at $1,609, his regular weekly wage while employed there. He received this payment the week ending November 8, 2008 and reported the entire amount to the Department that same week. The severance agreement that Mr. Thede signed with his employer said it was governed by the laws of the state of New York and it was Mr. Thede's belief that in New York one can collect unemployment insurance benefits even if a lump sum severance payment is received. (Exh. 5, Thede testimony).

Investigator Irma Lewis sent Mr. Thede a Preliminary Audit Notice on June 15, 2009 indicating a potential overpayment of $2,334 for the time period from November 9, 2008 through December 20, 2008. (Exh. 1). Mr. Thede called Ms. Lewis at some point after receiving the Preliminary Audit Notice. He explained his actions in conjunction with the severance pay he received. Ms. Lewis informed Mr. Thede that he should have waited six weeks after his termination to file for unemployment benefits to account for the severance pay received. (Thede testimony).

REASONING AND CONCLUSIONS OF LAW

As an initial matter, the only evidence considered in this decision is evidence that was offered at the September 4, 2009 hearing. An earlier hearing was held on August 10, 2009, but evidence offered at that hearing is not being considered. The Department's rules provide that for good cause shown the hearing may be reopened to allow a party who did not initially participate to do so.[1] The record was reopened in this case because Mr. Thede received the initial Notice of Hearing too late to participate. The Department

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[1] 871 Iowa Administrative Code (IAC) 26.14(7)(b).

received the rescheduled notice of hearing but elected not to participate.

A.   *Overpayment*

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD must recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.[2]

Iowa law provides that individuals are disqualified from benefits "[f]or any week with respect to which the individual is receiving or has received payment in the form of any of the following: (1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay."[3] The Department has the burden of proving disqualification from benefits because of receipt of severance pay.[4]

Mr. Thede acknowledged at hearing that his severance package gave him six weeks' pay at $1,609 per week. He received the pay in one lump sum, rather than weekly, but it is clear from the record that the severance was to compensate him for six weeks of wages.

Severance pay is deducted from unemployment benefits on a dollar-for-dollar basis.[5] Mr. Thede's weekly benefit amount during the time period in question was $389. The amount of $1,609 in severance pay was attributable to Mr. Thede during the weeks ending November 15, November 22, November 23, December 6, and December 13, 2008. The week endingDecember 20, 2008, $1,408 in severance pay was attributable to Mr. Thede. (Exh. 2). In each of those weeks, Mr. Thede was paid $389 in unemployment insurance benefits. Mr. Thede's severance pay must be deducted from that amount, therefore he was overpaid by $389 each week. The total overpayment for those weeks is $2,334. The Department's decision regarding the existence and amount of overpayment is affirmed.

B.   *Misrepresentation*

The Department's decision that the overpayment was a result of misrepresentation on the part of Mr. Thede is, however, not supported by the evidence in the record. Mr. Thede had a good faith belief that he was required to report the severance pay in the week it was received. He did so. There is no indication that Mr. Thede's failure to prorate his severance pay over six weeks was a result of misrepresentation. Mr. Thede was simply confused about the reporting requirements. This confusion is understandable.

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[2] Iowa Code § 96.3(7)(a) (2009).
[3] Iowa Code § 96.5(5)(a)(1) (2009).
[4] Iowa Code § 96.6(2) (2009).
[5] 871 IAC 24.13(3)(c).

DECISION

Iowa Workforce Development's decision dated July 10, 2009, reference 1, is MODIFIED. The claimant has been overpaid benefits in the amount of $2,334. The overpayment, however, is not attributable to misrepresentation. The Department shall take any action necessary to implement this decision.

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