

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

Appeal Number: 04-IWDUI-194
OC: 08/17/03
Claimant: Appellant (1)

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.**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

SHANNON M GREEN
1020 OAK STREET
DUNCOMBE IA 50532

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.

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

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.

DAN ANDERSON, IWD

(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 October 7, 2004, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$1,328.40, because of misrepresentation in failing to report or correctly report wages earned with Spherion Atlantic Workforce during the period from November 30, 2003 to January 31, 2004.

After due notice was issued, a hearing was held by telephone conference call on October 27, 2004.

The claimant did not participate. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Jane Connor.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits with an effective date of August 17, 2003.

A wage cross-match audit was done on the claimant's claim for the fourth quarter of 2003 and the first quarter of 2004. A representative of Spherion Atlantic Workforce submitted to the department the claimant's payroll summary for the period from the week ending date of December 7, 2003 through and including February 1, 2004. The department compared the weekly payroll summary against the claimant's claim for unemployment benefits for the same weeks.

The department determined that the claimant had seven-weeks of overpayment. The claimant reported no work and wages for the weeks ending December 6, and December 13, 2003 and she received a benefit of \$368 for each week. The employer paid the claimant gross wages of \$399 and \$247 for the same week. The claimant was not entitled to any benefit for the week ending December 6, and a partial benefit of \$213 for December 13, 2003 that causes an overpayment of \$368, and \$155. The claimant received a benefit of \$260 for the week ending December 20, 2003 based on reporting no work and wages; the employer paid the claimant gross wages of \$417 that does not entitle the claimant to any benefit creating an overpayment of \$260.

As to the remaining four-weeks of overpayment the claimant reported wages of and received a benefit, as follows, to wit: week ending January 10, 2004 - \$200, \$260; January 17 - \$185, \$275; January 24 - \$180, \$280; January 31 - \$130, \$330. The employer paid the claimant wages of \$420, \$399, \$389 and \$173 for these four-weeks that entitles the claimant to no benefit for the first three-weeks, and a partial benefit of \$287 for the fourth week. The claimant is overpaid benefits \$260, \$275, \$280 and \$40 for these four weeks. The gross overpayment for the seven-weeks is \$1,641.

The department audit noted that the claimant was underpaid benefits \$312.60 for three-weeks (weekending December 27 - \$108; January 3 - \$2; February 28 - \$202.60) that reduced the total overpayment from \$1,641 to a net overpayment of \$1,328.40.

Investigator Connor mailed a notice to the claimant on September 24, 2004 requesting her to report to the Fort Dodge workforce center regarding the department audit and \$1,328.40 overpayment. The claimant responded with a phone call to Connor. The claimant did not dispute the amount of the overpayment, but stated she may have miss-reported her wages because she was paid two-weeks after the week in which she worked and earned the wage. The claimant also stated that she reported her net wages rather than her gross wages each week while claiming for benefits. The claimant advised that she remained unemployed after she ceased claiming for benefits in February 2004, and she asked whether she could file claims for that period. Connor responded that the claimant would need to report to her workforce center and file those claims.

Connor concluded the claimant misrepresented her claims for benefits that lead to the overpayment. The claimant was asked whether she worked the week she was claiming, and for the weeks ending December 6, and December 13, 2003, she answered no. The claimant had prior experience in filing unemployment claims in 1997, 1999, and she incurred an overpayment of \$3,767 in 1992. Connor believes that the claimant should have known how to properly report her work and wages each week based on prior claim experience.

The claimant responded to the hearing notice by calling the administrative law judge. The claimant advised that she was working a probationary job that did not allow her to participate in this hearing, and she requested that her October 9, 2004 appeal letter be considered as her statement.

Connor stated that the claimant could report to her local workforce center that would assist her in filing further unemployment claims for the period she remained unemployed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$1,328.40, 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 \$1,328.40 for the 7-weeks ending January 31, 2004 for failing to report and correctly report her wages earned with Spherion Atlantic Workforce pursuant to Iowa Code section 96.16-4. The department established that the claimant misrepresented her claim by answering no to the question whether she worked the weeks ending December 6, and December 13, 2003, and by substantially under-reporting her wages in 4 of the remaining 7-weeks she claimed benefits. The claimant's statement that she reported net wages does not account for the substantial difference in what she actually earned. The claimant had significant unemployment claim experience, and she should have known to report her wages each week as earned,

not when paid.

DECISION:

The decision of the representative dated October 7, 2004, reference 02, is AFFIRMED. The claimant is overpaid benefits \$1,328.40 due to misrepresentation.

rls