

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

Appeal Number: 04-IWDUI-221
OC: 01/18/04
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.

KEVIN L SHAW
905 MAIN STREET
KEITHSBURG IL 61442

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)

December 23, 2004

(Decision Dated & Mailed)

871 IAC 26.14(7)
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 November 18, 2004, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$1,188.82, because of misrepresentation in failing to report wages earned with Murphy Brothers Inc. for the 5-weeks ending May 3, 2003.

After due notice was issued, a hearing was held by telephone conference call on December 20, 2004. The claimant did not participate. Iowa Workforce Development, Investigation and Recovery participated by Investigator, Tom Carnahan. Official Notice was taken of the administrative file.

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: The claimant filed a claim for unemployment benefits with an effective date of January 19, 2003 and January 18, 2004.

A wage cross-match audit was done on the claimant's claim for the second quarter of 2003. A representative of Murphy Brothers Inc. responded to the department audit by reporting the wages earned by the claimant during a review period from March 31, 2003 to May 10, 2003. The department compared the employer's audit report against the claimant's unemployment claims for the same weeks.

The claimant reported no work and wages for the six weeks of the review period, and he received a benefit of \$292 for each of 4-weeks ending April 23, 2003, and \$20.82 for the week ending May 3, 2003. When the claimant called in his claim for the 5-weeks ending May 3, 2003, he answered no to the question whether he worked that week.

Investigator Carnahan mailed a notice to the claimant regarding his overpayment, but the claimant did not respond.

The claimant did not respond to the hearing notice until after the close of the record. The claimant failed to follow the hearing instructions by calling-in with a phone number prior to the time scheduled for the hearing.

The claimant requested an in-person hearing to the department location closest to his Illinois residence that is Burlington, Iowa. The department investigator resides in Davenport, Iowa, and the claimant was sent a memo denying his request for that reason.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant's request for an in-person hearing should have been granted. The claimant wanted a hearing in Burlington, Iowa that is closest to his Illinois residence. The request is denied due to the distance the department investigator would have to travel from his office in Davenport to the Burlington hearing site pursuant to Iowa Code section 96.6-3.

The request to reopen the record is denied, because a failure to follow the hearing notice instruction is not a good cause to do so pursuant to 871 IAC 26.14(7).

The further issue is whether the claimant is overpaid benefits \$1,188.82, 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 \$1,188.82 for the 5-weeks ending May 3, 2003 pursuant to Iowa Code section 96.16-4. The claimant misrepresented his claim by failing to acknowledge his work and wages earned when claiming for benefits.

DECISION:

The decision of the representative dated November 18, 2004, reference 02, is AFFIRMED. The claimant is overpaid benefits \$1,188.82 due to misrepresentation.

rls