

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

Appeal Number: 01-IWDUI-255
OC: 01-25-09
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

MIKE S. TOBIAS
237 DILLAWAY
MUSCATINE, IA 52761

STATE CLEARLY

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

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

February 2, 2010

(Decision Dated & Mailed)

Section 96.16-4 - Misrepresentation
Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE

Claimant Mike S. Tobias filed an appeal from an Iowa Workforce Development decision dated December 8, 2009, reference 05, which held he had been overpaid unemployment benefits in the amount of \$386.00, because he incorrectly reported wages earned with Willis Cadillac, Inc. during the week between August 16, 2009 and August 22, 2009.

A hearing was scheduled by way of telephone conference call to be held on January 11,

2009. At the time of hearing, Mr. Tobias appeared and participated on his own behalf. The department was represented by Investigator Tom Carnahan.

Mr. Carnahan informed the undersigned that the decision issued by Workforce Development was incorrect. The decision named the wrong employer, gave an incorrect amount of benefits the department alleged was overpaid and set forth the wrong reporting period. Mr. Carnahan stated the correct amount of the overpayment was \$598 based on a failure to report earnings with Temp Associates.

The parties agreed that the department would rescind its decision and issue a new decision with corrected information. Rather than dismiss the appeal on the existing decision and require Mr. Tobias to file a new appeal, the parties agreed to continue the hearing until February 1, 2010. The undersigned instructed Mr. Carnahan to supply a copy of the new decision for the rescheduled hearing. This office issued a new notice of hearing rescheduling the matter for February 1, 2010 at 1:00 p.m.

Prior to February 1, 2010, Mr. Carnahan did submit additional documentation showing Mr. Tobias was employed by Temp Associates from the week ending August 22, 2009 through the week ending August 29, 2009. Temp Associates reported Tobias earned \$487.80 during the first week and \$539.63 the second. Tobias reported to the department he did not work during those weeks. The department determined Tobias was not entitled to unemployment benefits based on the wages reported by Temp Associates so the \$361 he was paid each of the two weeks plus the \$25 he received in stimulus benefits each of the two weeks was incorrectly paid. According to the documents submitted by Mr. Carnahan, the department was now claiming the total overpayment to Mr. Tobias equaled \$772.

Although Mr. Carnahan submitted the documentation set forth above, he did not submit a new decision issued by the department.

On February 1, 2010 neither Mr. Tobias nor Mr. Carnahan appeared to participate in the hearing.

FINDINGS OF FACT

Iowa Workforce Development issued a decision dated December 8, 2009 holding Mike Tobias had been overpaid unemployment benefits in the amount of \$386.00, because he incorrectly reported wages earned with Willis Cadillac, Inc. during the week between August 16, 2009 and August 22, 2009.

Investigator Tom Carnahan admitted the decision is incorrect.

There is no evidence that IWD has issued a new, corrected decision or that Mr. Tobias has notice of the amount of overpayment IWD is now alleging.

CONCLUSIONS OF LAW

Iowa Workforce Development is required by rule to recover any overpayment of benefits regardless of whether the recipient acted in good faith. Recovery may be made by either having a sum equal to the overpayment deducted from future benefits or by having the recipient pay the amount of the overpayment to the division.¹ If any benefits were received 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 benefits recipient.²

The department's representative in this case, Tom Carnahan, admitted the decision issued on December 8, 2009 was incorrect as to the employer, the amount of overpayment and the period involved. Therefore that decision should be reversed.

DECISION

The decision of the representative dated December 8, 2009 reference 05, is REVERSED. The claimant was not overpaid benefits in the amount of \$386.

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¹ Iowa Code section 96.3(7).

² Iowa Code section 96.16(4).