

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

Appeal Number: 14-IWDUI-303
OC: 02/10/13
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ANTHONY D. TAYLOR
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**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS AND RECOVERY
ATTN: Michelle Saddoris
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209**

JONI BENSON, 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 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.

(Administrative Law Judge)

November 26, 2014

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Anthony D. Taylor filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated October 8, 2014, reference 02. In this decision, the Department determined that Mr. Taylor was overpaid unemployment insurance benefits in the net amount of \$1,295 from June 30, 2013 through January 4, 2014. The decision stated that the overpayment resulted from the claimant incorrectly reporting earnings from NPC International, Inc. and Kim's Food, Inc.-Wendy's.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on October 22, 2013 for the purpose of scheduling a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on September 16, 2014. Subsequently, on November 10, 2014, a Notice of In-Person Hearing was mailed to the parties. On November 24, 2014, hearing was held at the Wallace State Office Building in Des Moines, Iowa. Claimant Anthony Taylor appeared and testified on his own behalf.

Investigator Michelle Sadoris appeared for Workforce Development. Ms. Sadoris submitted exhibits marked A-C, all of which were admitted into evidence without objection. Additionally, official notice was taken of the documents in the administrative file, numbered 1-16.

ISSUE

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

FINDINGS OF FACT

Anthony Taylor filed a claim for unemployment benefits with an effective date of February 10, 2013. Mr. Taylor made claims for and received unemployment benefits during the third and fourth quarters of 2013.

The Department conducted an audit of Mr. Taylor's unemployment claim for the final two quarters of 2013. Mr. Taylor's weekly benefit amount during that time period was \$198. During most of the weeks in the audit period, the amount that Mr. Taylor reported earning was different than the amount that his employer, Wendy's, reported he earned.

The following chart sets out the amounts claimed by Mr. Taylor and reported by Wendy's, as well as the amount of benefits Mr. Taylor received each week and the amount of benefits the Department believes he should have received if his wages were correctly reported. In support of its position, the Department submitted *Wage Cross Match* forms completed by a

| <i>Week ending</i> | <i>Reported by claimant</i> | <i>Reported by employer</i> | <i>Benefits rec'd</i> | <i>Benefits entitled</i> | <i>Difference</i> |
|--------------------|-----------------------------|-----------------------------|-----------------------|--------------------------|-------------------|
| 07/06/13 | \$179 | \$148 | \$ 68 | \$ 99 | (\$ 31) |
| 07/13/13 | \$210 | \$236 | \$ 37 | \$ 0 | \$ 37 |
| 07/20/13 | \$187 | \$251 | \$ 60 | \$ 0 | \$ 60 |
| 07/27/13 | \$179 | \$228 | \$ 68 | \$ 0 | \$ 68 |
| 08/03/13 | \$195 | \$198 | \$ 52 | \$ 49 | \$ 3 |
| 08/10/13 | \$235 | \$342 | \$ 0 | \$ 0 | ----- |
| 08/17/13 | \$241 | \$221 | \$ 0 | \$ 0 | ----- |
| 08/24/13 | \$202 | \$259 | \$ 45 | \$ 0 | \$ 45 |
| 08/31/13 | \$187 | \$228 | \$ 60 | \$ 0 | \$ 60 |
| 09/07/13 | \$210 | \$228 | \$ 37 | \$ 0 | \$ 37 |
| 09/14/13 | \$135 | \$172 | \$112 | \$ 75 | \$ 37 |
| 09/21/13 | \$187 | \$218 | \$ 60 | \$ 0 | \$ 60 |
| 09/28/13 | \$141 | \$166 | \$106 | \$ 81 | \$ 25 |
| 10/05/13 | \$187 | \$226 | \$ 60 | \$ 0 | \$ 60 |
| 10/12/13 | \$ 5 | \$ 56 | \$198 | \$191 | \$ 7 |

| <i>Week ending</i> | <i>Reported by claimant</i> | <i>Reported by employer</i> | <i>Benefits rec'd</i> | <i>Benefits entitled</i> | <i>Difference</i> |
|--------------------|-----------------------------|-----------------------------|-----------------------|--------------------------|-------------------|
| 10/19/13 | \$117 | \$206 | \$130 | \$ 41 | \$ 89 |
| 10/26/13 | \$171 | \$225 | \$ 76 | \$ 0 | \$ 76 |
| 11/02/13 | \$148 | \$206 | \$ 99 | \$ 41 | \$ 58 |
| 11/09/13 | \$190 | \$227 | \$ 57 | \$ 0 | \$ 57 |
| 11/16/13 | \$140 | \$228 | \$107 | \$ 0 | \$107 |
| 11/23/13 | \$132 | \$162 | \$115 | \$ 85 | \$ 30 |
| 11/30/13 | \$140 | \$228 | \$107 | \$ 0 | \$107 |
| 12/07/13 | \$ 93 | \$106 | \$154 | \$141 | \$ 13 |
| 12/14/13 | \$156 | \$232 | \$ 91 | \$ 0 | \$ 91 |
| 12/21/13 | \$ 96 | \$386 | \$151 | \$ 0 | \$151 |
| 12/28/13 | \$280 | \$276 | \$ 0 | \$ 0 | ----- |
| 01/04/14 | \$156 | \$204 | \$ 91 | \$ 43 | \$ 48 |

Based on the foregoing, the Department determined that Mr. Taylor was under paid benefits in the amount of \$31 and was overpaid unemployment benefits in the amount of \$1,336, resulting in a net overpayment of \$1295.

After determining the discrepancy between the amounts reported by Mr. Taylor and Wendy's, Department investigator Michelle Saddoris sent Mr. Taylor a preliminary audit notice. The notice stated that Mr. Taylor must respond by September 29, 2014. Mr. Taylor contacted Ms. Saddoris on September 22, 2014. He stated that he believed Wendy's lied about the hours he worked. Ms. Saddoris advised Mr. Taylor to provide any time cards, paystubs or other payroll records he could by the September 29th due date. Subsequently, Mr. Taylor contacted Ms. Saddoris a second time, on September 25, 2014, requesting an extension of time to gather records because he was working so much he did not have time to get the information together. Ms. Saddoris extended the deadline until October 7, 2014; however, Mr. Taylor did not provide any additional information. (Saddoris testimony).

At hearing, Mr. Taylor stated that he originally applied for benefits only because he was attempting to get Wendy's to give him more hours. He testified that he does not understand how an overpayment of benefits could have happened. Mr. Taylor stated that, because Wendy's pays on a Wednesday through Tuesday week and Workforce Development calculates benefits on a Sunday through Saturday week, he had to recalculate the amount of his wages every week that he claimed benefits. Mr. Taylor noted that he has filed claims in the past and knows what he is doing. He shared that he had a very contentious relationship with Wendy's and believes they were not honest in reporting his hours. Mr. Taylor pointed out that for the week ending October 12, 2013, he did not work at all, but could not enter a "0" for hours worked when he filed his claim, so he indicated he worked five hours that week. Wendy's, however, reported he worked 7 hours during that week. Mr. Taylor explained that that discrepancy meant to him that Wendy's was being untruthful.

Mr. Taylor testified that he did not have access to any of the records that would support his calculation of wages earned because his house flooded and he had to move. He said he did not go to Wendy's and ask for payroll records to prove he properly reported his earnings

because they have lied to him in the past.

IWD Investigator Michelle Sadoris testified at hearing that there is a chart in the back of the handbook given to benefits recipients to assist them in calculating their weekly wages when their pay periods do not match the agency's reporting period. She also noted that, had Mr. Taylor reported that he did not work at all during the week of ending October 12, 2013, he would not have had to enter an amount of hours worked. Ms. Sadoris noted that Mr. Taylor might not have been filing accurate claims given his testimony about this.

REASONING AND CONCLUSIONS OF LAW

An individual who is partially unemployed may receive unemployment insurance benefits if he is working less than his normal full-time week for an employer and is earning less than his weekly benefit amount plus fifteen dollars.¹ Mr. Taylor, then, could have earned up to \$213 in a week and still received some amount of unemployment benefits. If a claimant earns less than the weekly benefit amount plus \$15, benefits are calculated as follows: weekly benefit amount minus the claimant's wages in the week that exceed 25% of the weekly benefit amount.² The definition of wages includes all remuneration for personal services. The portion of an employee's wages that is withheld by the employer to pay applicable taxes is not excluded from the relevant definition of wages under Iowa law.³

While Mr. Taylor asserted at hearing that his employer was "untruthful about the amount of his pay during the time period in question, he did not submit any documentary evidence to support his claim. Additionally, when given the opportunity to produce substantiation of his own calculations, Mr. Taylor first told Ms. Sadoris he needed more time to do so because he was working too much but then then testified at hearing that he did not have any records to submit due to a flood and a household move. In contrast, the Department submitted crossmatch audit worksheets filled out by the employer showing weekly hours and wages for all of the week in question. Additionally, Mr. Taylor's testimony regarding his inability to claim that he had worked no hours during one week demonstrates that he may not have been filing accurate claims; had he simply stated he had not worked at all that week, he would not have had to declare hours worked.

Under these circumstances, I credit the Department's evidence regarding the wages that Mr. Taylor earned during the weeks at issue. Based on that evidence, Mr. Taylor received a net overpayment of benefits in the amount of \$1,295

Under Iowa law, if an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, the Department must recover those benefits even if the individual acted in good faith and is not otherwise at fault. The Department 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.⁴

1 Iowa Code § 96.19(38)(b)(1) (2009).

2 871 Iowa Administrative Code (IAC) 24.18.

3 Iowa Code § 96.19(41) (2009).

4 Iowa Code § 96.3(7)(a) (2009).

Based on the foregoing, IWD's decision must be affirmed.

DECISION

The Department's decision dated October 8, 2014, reference 02 is AFFIRMED The claimant has been overpaid benefits in the total amount of \$1,295.

KKK