

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

Appeal Number: 08-IWDUI-066
OC: 10/15/06
Claimant: Appellant (6)

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 Notice of Appeal, directly to the **Employment Appeal Board, 4TH Floor Lucas Building, Des Moines, Iowa 50319.**

JOHN P RHONER
619 N ELM STREET
WEST LIBERTY IA 52776-1267

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

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

Jean M. Davis

(Administrative Law Judge)

May 30, 2008

(Decision Dated & Mailed)

96.3-7 – Recovery of Overpayment
96.16-4 - Misrepresentation

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated April 18, 2008, reference 01 that he was overpaid benefits \$1,041 for a three-week period between January 7, 2007 and February 10, 2007, because he failed to report wages earned with Entegeee Inc.

A telephone hearing was scheduled and held on May 19, 2008, pursuant to due notice. The claimant, John Rhoner, participated. Investigator Tom Carnahan, participated for Investigation & Recovery, Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that:

During the hearing, it became apparent that the Claimant had not received copies of the audit information on which the Investigator had relied nor had the Claimant received the preliminary audit notice of March 27, 2008 sent from the Investigator. In addition, the Investigator stated that there was a second audit pending. As such, the Investigator requested that this case be remanded to the Department for further consideration. The claimant concurred in and registered no objection to that request.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the department's request to remand this matter for further review of the overpayment should be approved (suggestion)

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 this matter should be REMANDED to Investigation & Recovery for a further review of the overpayment and department decision dated April 18, 2008. Investigator Carnahan is requesting a further review of the overpayment, and the claimant does not resist. Investigation & Recovery shall issue a new decision regarding any overpayment arising from this matter (suggested language).

DECISION:

The decision of Iowa Workforce Development dated April 18, 2008, reference 01, is SET ASIDE. The overpayment matter is REMANDED to Investigation & Recovery for further review.

jmd