

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

**Appeal Number:** 05-IWDUI-0936  
**OC:** 04/04/04  
**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, 4<sup>th</sup> 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.

**SHELLY A KERSEY  
701 PARKRIDGE AVENUE  
HUXLEY IA 50124**

**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

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(Administrative Law Judge)

April 29, 2005

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(Decision Dated & Mailed)

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**Section 96.3-7 - Recovery of Overpayments**

**STATEMENT OF THE CASE:**

The claimant filed an appeal from an Iowa Workforce Development decision dated April 1, 2005, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$692.00, because she incorrectly reported wages earned with C.P.L. Designs Inc. for the 5-weeks ending May 15, 2004.

After due notice was issued, a hearing was held by telephone conference call on April 26, 2005. The claimant participated. Iowa Workforce Development, Investigation and Recovery participated

by Investigator, Cindy Stroud. The parties agreed to move the hearing from May 2, 2005.

#### 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 that: The claimant filed a claim for unemployment benefits with an effective date of April 4, 2004. The claimant conferred with a department representative about how to report her wages at C.P.L. Designs while claiming for unemployment. The claimant was advised to report her (guaranteed) hourly rate of \$7 per hour times the number of hours she worked each week rather than her 50% commission rate based on production. The employer has a policy to pay the guaranteed rate unless the commission rate would be greater.

The department audited the claimant's claim for the second quarter of 2004. A representative reported to the department the wages earned by the claimant each week of a review period from April 6, 2004 to May 15, 2004. The department compared the employer's wage report against the claimant's claims for the same weeks.

The department relied on the employer's wage report that showed the claimant earned more wages than what she reported for each of the 5-weeks ending May 15, 2004. The department concluded the claimant had overpayments of \$80, \$175, \$80, \$174, and \$183 that totaled \$692.

Investigator Stroud mailed a notice to the claimant on March 15, 2005 with the audit information regarding the \$692 overpayment. When the claimant failed to respond by the deadline, the department issued a decision that included misrepresentation. After the claimant responded by a fax communication on March 29 that explained what occurred, the department issued a new decision that the claimant was overpaid, but there was no misrepresentation.

The claimant reviewed the department audit and she found no err by the employer as to the report of her wages, and she found no mistake by the department as to the amount of the overpayment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$692.00.

#### **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 \$692.00 for the 5-ending May 15, 2004 pursuant to Iowa Code Section 96.3-7. The claimant made a good faith err in relying on department advice to report her guaranteed hourly wage-rate each week rather than her commission rate that produced greater wages. The claimant found no employer errs in the report of her wages, and the department established that it correctly calculated the overpayment. When the department learned the reason for the overpayment, it modified the original decision by eliminating any consideration of misrepresentation.

**DECISION:**

The decision of the representative dated April 1, 2005, reference 02, is AFFIRMED. The claimant is overpaid benefits \$692.00.

rls