

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

Appeal Number: 05-IWDUI-0983
OC: 08/15/04
Claimant: Appellant (1)

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.

CHRISTINE BUSHMAN
14907 ROUTE 20 #64
PEOSTA IA 52068

STATE CLEARLY

MILLER PURCELL INC
JIM MILLER
1920 ELM STREET
DUBUQUE IA 52001-3641

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)

August 29, 2005

(Decision Dated & Mailed)

Section 96.5-5c – Disability Pay
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated July 12, 2005, reference 04, which held that the claimant was overpaid unemployment benefits in the amount of \$2,720.00, because she failed to report disability pay/wage interruption insurance that was 100% paid for by Miller Purcell Inc.

After due notice was issued, a hearing was held by telephone conference call on August 22, 2005. The claimant did not participate. Jim Miller, Company President, participated for Miller Purcell Inc.

Iowa Workforce Development, Investigation and Recovery participated by Investigator, Tom Carnahan. Department Exhibits One through Four were received as evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having examined all of the evidence in the record, the finds: The claimant filed a claim for unemployment benefits with an effective date of August 15, 2004. The claimant's weekly benefit amount is \$180.00. The claimant received unemployment benefits of \$160.00 each week during a seventeen-week period from August 15, 2004 through the week ending December 11, 2004.

A wage cross match audit procedure showed that the claimant received unemployment benefits during the third and fourth quarter of 2004 at a time she was receiving some insurance payments from her employer's (Miller Purcell Inc.) insurance company. An employer representative responded to the department audit, and reported the disability pay.

The department assigned Investigator Carnahan to conduct an audit review. Carnahan learned that the employer's insurance company paid the claimant \$640 each month during the review period for disability pay. Miller Purcell Inc. pays 100% of the premium for the disability insurance.

Carnahan determined the weekly disability payment to be \$160, and he applied it to each of the seventeen-weeks the claimant claimed unemployment benefits for the period from August 15, 2004 to December 11, 2004. The claimant did not report any wages or the disability pay, and she received a benefit of \$180 for each of the weeks. Carnahan determined that according to the Iowa Employment Security law the claimant should have reported the disability pay that is fully deductible from benefits. After offsetting the \$160 weekly disability pay, the claimant was entitled to a weekly benefit of \$20 that caused an overpayment of \$160 for each of the seventeen-weeks for a total overpayment of \$2,720.

The claimant responded to a department notice for an interview with Carnahan on May 31, 2005. Carnahan showed the claimant the department documentation that it relied upon (Exhibits One through Four) to determine the overpayment. The claimant questioned the amount of the disability paid to her, and why she was overpaid. The department did not advise the claimant that she should report the disability pay. Carnahan gave the claimant the documentation for her to review, and he rescheduled the interview for June 13. The claimant did not report.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant received a disability pay that is deductible from unemployment benefits such that she is overpaid \$2,720.00.

Iowa Code Section 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. A governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment made under a plan maintained or contributed by a base period or chargeable employer...

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 \$2,720.00 for the seventeen-weeks ending December 11, 2004 due to receiving disability pay under an insurance plan that the premium is 100% paid by her employer pursuant to Iowa Code Sections 96.5-5c and 96.3-7. The law requires that disability pay is fully deductible from unemployment benefits when the employer pays 100% of the premium (see also 871 IAC 24.13(3)e). The claimant was given an opportunity to review the department documentation that it relied upon, and she did not refute it or contest this matter by participating in the hearing.

DECISION:

The decision of the representative dated July 12, 2005, reference 04, is AFFIRMED. The claimant is overpaid benefits \$2,720.00 due to receiving disability pay.

rls