

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

Appeal Number: 08-IWDUI-077
OC: 12/24/06
Claimant: Appellant (R)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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MARIA HOBBS, IWD
DAN ANDERSON, 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 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.

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)

June 20, 2008

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated May 2, 2008, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$2,058, because he failed to report wages earned with ABC of Iowa, and Iowa Valley Community College during a period from January 14, 2007 to June 2, 2007.

After due notice was issued, a hearing was held by telephone conference call on June 16, 2008. The claimant, and his Attorney, Kevin O'Hare, participated. Iowa Workforce Development, Investigation and Recovery, participated by Sally Oordt, Investigator. Department Exhibit One was 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, finds that: The claimant filed a claim for unemployment benefits with an effective date of December 24, 2006. Investigation and Recovery audited the claimant's unemployment claim due to receiving reports that he worked for ABC of Iowa, and Iowa Valley Community College during the first and second quarters of 2007.

During the audit, the department received a copy of a contract between the claimant and Iowa Valley Community College District for a term from January 16, 2007 to May 11, 2007 where he would perform services as an "Adjunct Instructor". The claimant was to be paid \$2,544 for the contract term on the 15th and last days of each calendar month beginning February 15.

During the audit, the department received information from ABC of Iowa that it paid claimant \$2,592 for a contract term from March 5, 2007 to May 31, 2007, for training of Carpentry Fundamentals Level One at Marshalltown Community College. The contract stipulated that claimant would conduct 27 training classes, and be paid for 108 hours at the rate of \$24 per hour.

When the claimant raised an issue that his work for IVCC and ABC of Iowa was contract, self-employment, Investigator Oordt proposed this matter should be reviewed by a Field Auditor of the Tax Bureau, IWD, for investigation and determination. The parties concurred to this proposal.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$2,058.00.

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 issue of whether claimant worked as an employee or self-employed contractor is REMANDED to the department tax bureau for investigation and determination. The tax bureau shall issue a written report to its findings with a copy to all the parties of record. No decision regarding the overpayment shall be made at this time.

DECISION:

This matter is REMANDED to the Tax Bureau to investigate and determine whether the services performed by the claimant for IVCC and ABC of Iowa are contract-self employment or as an employee.

rls