

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

Appeal Number: 04-IWDUI-146
OC: 01/20/02
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.

TIM M GRONINGA
1410 HAWTHORNE DRIVE
CEDAR FALLS IA 50613

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

(Administrative Law Judge)

September 13, 2004

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Appeal
Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated June 2, 2004, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$588.00, for failing to report wages earned with COMSYS Information Tech for the 2-weeks ending August 3, 2002.

ALJ Stephenson issued a decision on July 16, 2004, but the claimant appealed to the Employment Appeal Board who remanded this matter for a new hearing by a decision dated August 11, 2004.

After due notice was issued, a hearing was scheduled for telephone conference call on September

7, 2004. The claimant, and his wife, Kim Groninga, participated. Neil Anderson, Investigator for Investigations and Recovery, participated for Iowa Workforce Development. Official Notice was taken of the contents of the Administrative file by ALJ Stephenson regarding the submission of documents.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds that: The claimant filed an unemployment claim effective January 20, 2002. The department conducted an audit of the claimant's claim for the second, third and fourth quarters of 2002.

The department submitted an audit form to COMSYS Information Tech, and a representative of the company responded by reporting to it the earnings of the claimant during a review period from July 15, 2002 to the week ending August 3, 2002. The department compared the employer's report of earnings for the claimant against his benefit payment record for the same weeks.

The claimant did not report any earnings for the 2-weeks ending August 3, 2002, and he received an unemployment benefit of \$294 for each week. Anderson concluded the claimant was overpaid a total of \$588 for the 2-week period due to excessive earnings.

Anderson mailed a notice to the claimant on May 10, 2004 that included the audit report of his employer regarding the \$588 overpayment. The claimant responded to Anderson by stating he did not report the earnings, because he believed it to be a product of self-employment (contract work). The claimant reviewed the issue with a representative of Iowa Workforce Development who confirmed his belief that his earnings were from self-employment.

When the claimant began employment, he filled-out forms that included a W-4 wage statement declaration regarding dependents and taxes to be withheld. During the course of his employment, his employer withheld taxes and social security from his bi-weekly earnings. When the claimant filed his 2002 federal tax return, he reported his earnings as wages as listed on the W-2 wage statement given to him by his employer.

Anderson checked the IWD records and noted that the claimant's employer reported the earnings paid to him as wages for insured work on its payroll contribution report submitted to the department.

The department issued and mailed the decision to the claimant's address of record, but he had moved, and the US Postal Service forwarded the decision to his new address. The claimant received the decision two or three days prior to the warning date of June 12, 2004 to meet the appeal deadline. The claimant wrote an appeal letter on June 10, but he called Unemployment Appeals on June 11, as he was concerned about meeting the deadline date to appeal. A representative named "Myra" spoke with the claimant and advised him to fax an appeal no later than Monday, June 14, as the deadline date of June 12 was a Saturday, and the latter date would be considered as timely. The claimant faxed his appeal on Sunday, June 13, and he called Unemployment Appeals on June 14 to learn if his appeal had been received. A representative stated that she could not confirm his appeal, as most likely it had been forwarded to an ALJ to conduct a hearing.

The claimant submitted another fax to Unemployment Appeals on June 21 regarding a witness(es) statement. The department acknowledges the June 21 fax as the claimant's appeal.

The claimant stated during the hearing that he does not dispute the amount of earnings reported by

the employer during the audit period.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant filed a timely appeal. The further issue is whether the claimant is overpaid benefits in the amount of \$588.00.

Iowa Code Section 96.6-2 provides:

2. Initial determination. Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from a decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The administrative law judge concludes that the claimant filed a timely appeal pursuant 871 IAC 24.35(2), and Iowa Code section 96.6-2. The claimant offered credible testimony that he was concerned about the time deadline to file an appeal when he correctly identified Myra, as a representative who works in Unemployment Appeals, and who he spoke with on Friday, June 11, 2004. The representative was accurate in stating that the appeal deadline is extended to June 14 by operation of law (Iowa Code section 4.1), because the deadline date of June 12 falls on a Saturday. The claimant made an appropriate inquiry of Appeals on June 14, as to whether it received his faxed appeal of June 13, and he was given the impression that it had been received and forwarded to an ALJ for hearing. Appeals erred by not checking further on the status of his June 13 fax-appeal, and by acknowledging his June 21 witness statement fax, as his appeal.

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 further concludes that the claimant is overpaid benefits \$588.00 for the 2-weeks ending August 3, 2002, pursuant to Iowa Code Section 96.3-7. The claimant did not report his earnings due to a good faith err in believing his work was contract-self employment. The evidence in this hearing clearly establishes that his work for the employer is employment, and he accepted this fact by reporting his 2002 earnings as wages on his federal tax return. The claimant did not dispute the amount of the earnings reported by his employer or the calculation of the department regarding the overpayment.

DECISION:

The Iowa Workforce Development Department decision of June 2, 2004, reference 02, is AFFIRMED. The claimant filed a timely appeal. The claimant is overpaid benefits in the amount of \$588.00.

rls