

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROBERT M READ
Claimant

APPEAL NO. 11A-UI-10389-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/10/10
Claimant: Appellant (1)

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Robert Read filed a timely appeal from the July 27, 2011, reference 05, decision that he was overpaid \$799.00 in benefits for three weeks between January 10, 2010 and February 6, 2010. After due notice was issued, a hearing was held on August 30, 2011. Mr. Read participated. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-UI-10388-JTT. Department Exhibits D-1 through D-5 were received into evidence.

ISSUE:

Whether Mr. Read was overpaid \$799.00 in benefits for three weeks between January 10, 2010 and February 6, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 11, 2010, and Iowa Workforce Development representative entered a reference 02 decision that disqualified Robert Read for benefits based on a January 8, 2010 separation from Casey's. Mr. Read did not take steps to file a timely appeal from the reference 02 decision when he received it and the decision became a final agency decision. Mr. Read later filed an appeal from the July 27, 2011 overpayment decision. The Appeals Section treated that appeal as also an appeal from the reference 02 disqualification decision upon which the overpayment decision was based. The reference 02 disqualification decision was affirmed. See Appeal Number 11A-UI-10388-JTT.

Mr. Read had established a claim for benefits that was effective January 10, 2010. For the weeks that ended January 16, January 30, and February 6, 2010, Workforce Development had approved benefits, but credited the benefit amount against a 2002 overpayment. The total amount credited for the three weeks was \$724.00 in regular benefits and \$75.00 in federal stimulus benefits tied to the regular benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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 department 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 department a sum equal to the overpayment.

b. (1) If the department 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the disqualification decision that prompted the overpayment decision was affirmed on appeal, the administrative law judge concludes that Mr. Read was indeed overpaid \$799.00 in benefits for three weeks between January 10, 2010 and February 6, 2010.

DECISION:

The Agency representative's July 27, 2011, reference 05, decision is affirmed. The claimant was overpaid \$799.00 in benefits for three weeks between January 10, 2010 and February 6, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css