

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHAEL W EVANS
1500 HIGHVIEW DR #8
MARION IA 52302

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 04A-UI-09405-RT
OC: 07-25-04 R: 03
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, 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 Workforce Development. 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)

(Decision Dated & Mailed)

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant, Michael W. Evans, filed a timely appeal from an unemployment insurance decision dated August 27, 2004, reference 02, determining that he was overpaid unemployment insurance benefits. After due notice was issued for a telephone hearing on September 23, 2004 at 3:05 p.m., the claimant did not call in a telephone number, either before the hearing or one and one-half hours after the hearing. There was no employer or respondent noticed. Consequently, no hearing was held. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having examined the record, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on August 27, 2004, reference 02, determining that claimant was overpaid unemployment insurance benefits in the amount of \$322.00 for one week between July 25, 2004 and July 31, 2004. The claimant filed for unemployment insurance benefits effective July 25, 2004 and received unemployment insurance benefits in the amount of \$322.00 for benefit week ending July 31, 2004. In a decision in appeal 04A-UI-09404-RT, the administrative law judge concluded that the claimant was not entitled to receive such benefits because his separation from his employer, McLeod USA Telecommunications Services, Inc., was disqualifying and, further, he was not able, available, and earnestly and actively seeking work.

The claimant is now shown as overpaid unemployment insurance benefits in the amount of \$322.00 which is the subject of this appeal.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is overpaid unemployment insurance benefits in the amount of \$322.00 for one week between July 25, 2004 and July 31, 2004. The administrative law judge concludes that the claimant is overpaid that amount for that period.

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 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.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$322.00 since separating from his employer, McLeod USA Telecommunications Services, Inc., on or about June 25, 2004 and filing for such benefits effective July 25, 2004. In appeal 04A-UI-09404-RT, the administrative law judge concluded that the claimant was not entitled to receive such benefits because his separation from his employer was disqualifying and he was not able, available, and earnestly and actively seeking work. Accordingly, the administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$322.00 to which he is not entitled and he is, therefore, overpaid such benefits. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 27, 2004, reference 02, is affirmed. The claimant, Michael W. Evans, is overpaid unemployment insurance benefits in the amount of \$322.00 for one week between July 25, 2004 and July 31, 2004.

tjc/tjc