

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL ATKINS
Claimant

APPEAL NO. 10A-UI-13546-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/04/10
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated September 22, 2010, reference 03, that held he is overpaid benefits \$239.00 for the week ending July 24, 2010 due to receiving vacation pay. A hearing was held on November 4, 2010. The claimant, and his witness, Kathy Walker, participated.

ISSUE:

The issue is whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds that: The claimant received a benefit of \$239.00 for the week ending July 24, 2010. The claimant is not eligible for the benefit based on the department decision dated September 22, 2010, reference 02, that has been affirmed (Appeal #10A-UI-13545-ST).

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.

The administrative law judge concludes claimant is overpaid benefits \$239.00 for the week ending July 24, 2010.

The claimant is overpaid because of the department decision he is disqualified that has been affirmed (See Appeal #10A-UI-13545-ST).

DECISION:

The decision of the representative dated September 22, 2010, reference 03, is affirmed. The claimant is overpaid benefits \$239.00 for the week ending July 24, 2010 due to receiving vacation pay from his employer.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs