

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**TERRY L GREGERSEN**

Claimant,

and

**IOWA WORKFORCE DEVELOPMENT**

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**HEARING NUMBER: 11B-UI-15531**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION:** 10A.601 Employment Appeal Board Review

**D E C I S I O N**

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed November 24, 2010, which set the hearing for December 18, 2010. The issue of whether the claimant was overpaid was to be determined. The administrative law judge's decision was issued December 22, 2010, holding that the claimant was liable for a \$3,474 overpayment. However, that decision did not address whether the claimant properly reported any employment outside the state of Iowa, which may have impacted the decision. That decision has now been appealed to the Employment Appeal Board.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2009) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision regarding the overpayment. The administrative law judge failed to establish whether the claimant properly reported any wage credits earned outside the state of Iowa, which may have a bearing on the overpayment and the claimant's responsibility for the same.

Extended benefits in this case are paid pursuant to Public Law 110-252, which provides in part:

REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

- (1) the payment of such emergency unemployment compensation was without fault on the part of any such individual; and
- (2) such repayment would be contrary to equity and good conscience.

PL 110-252, §4005(b), 122 STAT. 2323, 2356. A similar provision is found at 871 IAC 24.50(7). That rule states:

24.50(7) Waiver of overpayments.

a. Individuals who have received amounts of temporary extended unemployment compensation to which they were not entitled shall be required to repay the amounts of such temporary extended unemployment compensation except that the state repayment may be waived if the workforce development department determines that:

- (1) The payment of such temporary extended unemployment compensation was without fault on the part of the individual; and
- (2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors shall be considered:

- (1) Whether a material statement or representation was made by the individual in connection with the application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual **knew or should have known that the statement or representation was inaccurate.**
- (2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual **knew or should have known that the fact was material.**
- (3) Whether the individual knew or could have been expected to know that the individual was not entitled to the temporary extended unemployment compensation payment.
- (4) **Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and which was erroneous or inaccurate or otherwise wrong.**

c. In determining whether equity and good conscience exist, the following factors shall be considered:

- (1) Whether the overpayment was the result of a decision on appeal;
- (2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and
- (3) Whether recovery of the overpayment will cause financial hardship to the individual.

According to the precepts of Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. Because there is no evidence in the record about whether the claimant reported he employment outside the state of Iowa, and no supporting documentation (Emergency Unemployment Compensation – Form 68-0245), we must remand this matter for further consideration.

**DECISION:**

The decision of the administrative law judge dated December 22, 2010, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, to reopen the record for the limited purpose of taking evidence on whether the claimant properly reported any insured work performed outside the state of Iowa pursuant to the aforementioned administrative rule. The administrative law judge shall conduct this limited hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester