

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES E WILLIAMS**

Claimant

**APPEAL NO. 10A-UI-13265-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA DEPT OF TRANSPORTATION**

Employer

**OC: 02/07/10**

**Claimant: Appellant (2)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

871 IAC 24.13 – Benefit Deductibility

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 21, 2010 (reference 01) decision that denied benefits and found the claimant overpaid. After due notice was issued, a telephone conference hearing was held on November 9, 2010. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

**ISSUE:**

The issue is whether claimant is overpaid benefits for the one week ending February 13, 2010 due to the receipt of back pay or other funds deductible from benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant took his mandatory unpaid days (MUD) days during the week ending February 13, 2010 and took early retirement April 29, 2010. A policy was effected dating retroactively to January 1, 2010 for those taking early retirement to prorate MUD leave according to their retirement date but he had already taken the time off before the policy was initiated. At retirement he was paid an additional \$495.82 equivalent to 17.2 hours' work. Claimant's belief was that it was paid because he was supposed to take 22.8 hours as furlough rather than 40 hours but the employer did not participate to explain the discrepancy.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes claimant has not been overpaid benefits.

Iowa Code § 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 that the claimant has not been overpaid unemployment insurance benefits in the amount of \$399.00 pursuant to Iowa Code § 96.3(7) as the claimant's payment after his retirement was not for wages earned during the week ending February 13, 2010 since he did not work that week.

**DECISION:**

The September 21, 2010 (reference 01) decision is reversed. The claimant has not been overpaid unemployment insurance benefits in the amount of \$399.00.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css