

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

DAVID V PEAVLER
503 – 7TH AVE
PRESCOTT IA 50859

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 05A-UI-05358-RT
OC: 04-03-05 R: 03
Claimant: Appellant (2)

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 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant, David V. Peavler, filed a timely appeal, 05A-UI-04679-RT, from an unemployment insurance decision dated April 21, 2005, reference 02, which was also treated as an appeal of a decision by an authorized representative of Iowa Workforce Development dated May 12, 2005, reference 04, determining that he was overpaid unemployment insurance benefits. After due notice was issued, a telephone hearing was held for appeal number 05A-UI-04679-RT, with the claimant participating. This appeal was consolidated with that appeal, number 05A-UI-04679-RT, for the purposes of the hearing with the consent of the parties. Although there was no employer or responded noticed in this appeal, the employer in the appeal with which this appeal was consolidated, Advance Services, Inc., participated in the hearing by

Mindy Shackelford, Human Resources Coordinator. No notice of this appeal was sent to the parties but the parties permitted the administrative law judge to take evidence on and decide the issue presented in this appeal, whether the claimant is overpaid unemployment insurance benefits under Iowa Code section 96.3-7, and waived further notice of that issue. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant filed for unemployment insurance benefits effective April 3, 2005 and began receiving benefits which continued thereafter. The claimant received unemployment insurance benefits in the amount of \$315.00 as follows: \$55.00 for benefit week ending April 9, 2005 (earnings \$270.00) and \$260.00 for benefit week ending April 16, 2005. This amount is now shown as overpaid and is the subject of this appeal. In a decision in appeal number 05A-UI-04679-RT, the administrative law judge concluded that the claimant was entitled to receive such unemployment insurance benefits because he did not refuse to accept suitable work and he was able for work and was excused from the provisions requiring him to be available for work and earnestly and actively seeking work.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is overpaid unemployment insurance benefits in the amount of \$315.00 for two weeks between April 3, 2005 and April 16, 2005. The administrative law judge concludes the claimant is not 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 \$315.00 since filing for such benefits effective April 3, 2005. In appeal number 05A-UI-04679-RT, the administrative law judge concluded that the claimant was entitled to receive such benefits because he had not refused to accept suitable work and he was able to work and was excused from the provisions requiring him to be available and earnestly and actively seeking work. Accordingly, the administrative law judge concludes that

the claimant has not received unemployment insurance benefits in the amount of \$315.00 to which he is not entitled and he is, therefore, not overpaid such benefits.

DECISION:

The representative's decision of May 12, 2005, reference 04, is reversed. The claimant, David V. Peavler, is not overpaid unemployment insurance benefits in the amount of \$315.00 for two weeks between April 3, 2005 and April 16, 2005.

pjs/pjs