

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH E TILTON
Claimant

APPEAL NO. 09A-UI-15954-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/05/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed from the October 13, 2009, reference 03, decision that concluded the claimant was overpaid unemployment insurance benefits as a result of a failure to report or incorrectly reporting vacation/severance pay from Sysco Food Services of Iowa (employer). A telephone hearing was scheduled and held on November 30, 2009, pursuant to due notice. The claimant did participate.

ISSUE:

The issue is whether the claimant was overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The vacation pay the claimant received for the three-week period ending April 25, 2009, was incorrectly reported. During those same weeks, the claimant reported no wages. He did receive unemployment insurance benefits for each of the weeks in issue.

REASONING AND CONCLUSIONS OF LAW:

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 been overpaid unemployment insurance benefits pursuant to Iowa Code § 96.3(7) as the vacation pay was incorrectly reported for the three-week period ending April 25, 2009. The representative's decision calculation is correct.

DECISION:

The October 13, 2009 reference 03, decision, is affirmed. The claimant was overpaid unemployment insurance benefits in the amount of \$1,084.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs