

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY KELLER**  
Claimant

**APPEAL NO. 12A-UI-09866-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 1/29/12**  
**Claimant: Appellant (2)**

Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Claimant appealed a representative's decision dated August 6, 2012, reference 02, that concluded claimant was overpaid unemployment insurance benefits in the amount of \$5,600.00 as a result of a disqualification decision. A telephone hearing was scheduled and held on August 20, 2012 pursuant to due notice. Claimant did participate.

**ISSUE:**

The issue is whether claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: The overpayment issue in this case was created by a disqualification decision that has now been affirmed. Claimant is overpaid \$5,600.00 for the 14 weeks ending May 5, 2012. Employer did not participate at the fact-finding interview.

**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 that claimant is overpaid unemployment insurance benefits in the amount of \$5,600.00 for the weeks ending May 5, 2012 pursuant to Iowa Code section 96.3(7) as the disqualification decision that created the overpayment decision has now been affirmed. Nevertheless, the benefits shall not be recovered due to the application of Iowa Code section 96.3(7)(b)(1) (2011).

**DECISION:**

The decision of the representative dated August 6, 2012, reference 02, is reversed. Claimant was overpaid benefits but the overpayment shall not be recovered due to the application of Iowa Code section 96.3(7)(b)(1) (2011).

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/css