

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL E MOHR
Claimant

APPEAL NO. 11A-EUCU-00057-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/28/08
Claimant: Appellant (1)

Section 96.19(20) – Emergency Unemployment Compensation Benefits
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 10, 2011, reference 03, which held claimant had been overpaid emergency unemployment compensation benefits. After due notice, a telephone conference hearing was scheduled for and held on February 19, 2011. Claimant participated. The record consists of the testimony of Russell Mohr. Official notice is taken of agency documents. This case was heard in conjunction with 11A-EUCU-00056-VST.

ISSUES:

Whether the claimant has been overpaid emergency unemployment compensation benefits; and

Whether the claimant's overpayment should be waived.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant established an original claim for benefits in Iowa with an effective date of September 28, 2008. The claimant did not begin receiving Iowa unemployment insurance benefits until the week ending May 2, 2009. The claimant was employed in Nebraska at several different dealerships prior to receiving Iowa unemployment insurance benefits. The claimant received Iowa unemployment insurance benefits through the week ending August 29, 2009. He then began receiving emergency unemployment compensation benefits on September 5, 2009, again through the state of Iowa.

The claimant also had a claim for unemployment insurance benefits in Nebraska and received Nebraska unemployment insurance benefits at the same time that he was receiving emergency unemployment compensation benefits from Iowa. The claimant did report his wages in Nebraska to Iowa. The representative ruled that the claimant was not eligible for emergency unemployment compensation benefits effective July 25, 2010, because he both had an existing

claim in Nebraska and was being paid in Nebraska. That decision was affirmed in 11A-EUCU-00056-VST.

The claimant was paid emergency unemployment compensation benefits for the twelve weeks ending October 16, 2010. The amount of the overpayment is \$3,563.53.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant has been overpaid.

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 evidence in this case established that the claimant was overpaid the sum of \$3,563.53 in emergency unemployment compensation benefits. The claimant does not deny that he received these benefits but he does not believe that this sum is correct because he did not receive the equivalent amount of benefits in Nebraska. The amount that the claimant received in Nebraska does not determine the amount of the overpayment. The agency records show that this sum was disbursed to the claimant for the time period in question. Accordingly, the amount of the overpayment is \$3,563.53.

Since the Department initially and erroneously failed to recognize the fact the claimant was eligible to receive regular unemployment in Nebraska as of July 25, 2010, the next issue is whether the overpayment should be waived.

The "Temporary Extended Unemployment Compensation" (TEUC) program was created by the "Job Creation and Worker Assistance Act of 2002." Public Law 107-147. It provided 13 weeks (later 26 weeks) of federally-funded TEUC benefits for regular benefit exhaustees. Under § 206(b) of the law, a state was required to recover overpayments from claimants who had been overpaid TEUC benefits unless the state, under the optional language of § 206(b), elected to waive repayment of the TEUC overpayment. States could elect to implement a TEUC waiver procedure even if they had no waiver provision under state law for regular compensation. Unemployment Insurance Program Letter No. 30-02 Pursuant to federal law then, Iowa elected to implement a TEUC waiver procedure, which resulted in 871 IAC 24.50(7) permitting waiver of an overpayment of "temporary extended unemployment compensation." TEUC benefits were payable through the week of April 3, 2004. Public Law 108-26. The TEUC program no longer exists. Therefore 871 IAC 24.50(7) does not apply to EUC because it is a separate federal program from TEUC.

The Emergency Unemployment Compensation (EUC) program was created by Public Law 110-252 in 2008. It initially provided 13 weeks additional weeks of federally-funded EUC benefits to persons who had exhausted regular unemployment benefits, which has been extended several times. P.L. 110-252 has its own specific provisions regarding overpayments and waivers of overpayment. §4005(b) states that:

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.

DOL's implementation instructions for § 4005(b) provide that a state **can elect** to waive recovery of nonfraudulent EUC overpayments, **provided** the state has a waiver provision for regular compensation **or** adopts a waiver provision for EUC that meets the federal waiver standard that (1) the payment of EUC was without fault on the part of the individual and (2) such repayment would be contrary to equity and good conscience. UIPL No. 23-08, Attachment A. There is no mandate that a state which does not have an overpayment waiver provision for regular benefits to create one for EUC.

The Department has not adopted the optional EUC waiver procedure. The state does have a waiver provision for a regular unemployment benefits, but that provision focuses on the lack of participation on the part of the employer in the making of the initial decision, not any determination that a repayment would be "contrary to equity and good conscience." Because 871 IAC 24.50(7) does not apply, and in the absence of an express waiver provision for the EUC program, the claimant's overpayment cannot be waived in Iowa and pursuant to the Iowa Supreme Court's ruling in *Sieversten v. Employment Appeal Board*, 483 N.W.2d 818, (Iowa 1992) no waiver of the overpayment is allowed.

DECISION:

The decision of the representative dated January 10, 2011, reference 03, is affirmed. The claimant has been overpaid the sum of \$3,563.53 in emergency unemployment compensation benefits on his September 28, 2008, Iowa claim.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css