

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL W BIRD
Claimant

APPEAL NO. 12A-UI-12857-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/19/12
Claimant: Appellant (1)

Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

Paul Bird filed a timely appeal from the October 17, 2012, reference 05, decision that he was overpaid \$675.00 in benefits for the six-week period between August 19, 2012 and September 29, 2012. After due notice was issued, a hearing was held on November 28, 2012. Mr. Bird participated. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-12856-JTT. Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to Mr. Bird.

ISSUE:

Whether Mr. Bird was overpaid \$675.00 in benefits for the six-week period between August 19, 2012 and September 29, 2012. He was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Paul Bird established a claim for unemployment insurance benefits that was effective October 19, 2012 and received \$675.00 in benefits for the six-week period between August 19, 2012 and September 29, 2012. On October 8, 2012, a Workforce Development representative entered a reference 04 decision that denied benefits effective August 19, 2012, based on the conclusion that Mr. Bird had unduly limited his work availability and could not be deemed available for work under the applicable law. The August 8, 2012 decision has been affirmed as a final agency decision based on Mr. Bird's failure to file a timely appeal from that decision. See Appeal Number 12A-UI-12856-JTT. It is the October 8, 2012, reference 04, decision that prompted the overpayment decision from which Mr. Bird has appealed.

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.

Because the August 8, 2012, reference 04, decision that disqualified Mr. Bird for benefits effective August 19, 2012 has been affirmed on appeal as a final agency decision, the \$675.00 in benefits that Mr. Bird received for the six-week period between August 19, 2012 and September 29, 2012 constitutes an overpayment of benefits. Mr. Bird must repay that amount to Workforce Development. There is no hardship waiver of repayment that would apply to relieve Mr. Bird of the obligation to repay the benefits.

DECISION:

The October 17, 2012, reference 05, decision is affirmed. The claimant was overpaid \$675.00 in benefits for the six-week period between August 19, 2012 and September 29, 2012. The claimant must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css