

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SIMON B ATARY
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL NO. 14A-UI-04932-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/27/13
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated May 7, 2014, reference 06, that concluded claimant was overpaid unemployment insurance as a result of a disqualification decision that had also concluded claimant was overpaid a specific amount of benefits. A hearing was scheduled and held on June 2, 2014 pursuant to due notice. Claimant did participate. Employer participated through Rhonda Hefter.

ISSUE:

The issue is whether claimant is overpaid unemployment insurance benefits and whether this issue is correctly before an administrative law judge.

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 addressed as a part of the Administrative Law Judge Decision 14A-UI-02119-SWT dated April 15, 2014. Said ruling not only encompassed whether the voluntary quit was for good cause, but also addressed the issue of overpayment and the amount of overpayment.

Subsequent to receiving that ruling, claimant did appeal to the Employment Appeals Board. On May 29, 2014 the Employment Appeals Board entered a decision affirming the Administrative Law Judge's Decision entered April 15, 2014.

At the same time Mr. Atary appealed to the Employment Appeals Board, he also went to the local Workforce office to attempt to question the decision. This new case was initiated regarding the very same actions from the employer. A Workforce fact finder then denied Mr. Atary's request for review, and Mr. Atary appealed the matter to this level.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3(7)a-b, 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.

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 § 96.8, subsection 5.

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 § 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 § 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 states pursuant to § 602.10101.

The administrative law judge has previously concluded that claimant was overpaid unemployment insurance benefits in the amount of \$2,830.98 pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision was reversed. This decision was very recently affirmed by the Employment Appeals Board. Should claimant wish to appeal that decision, he must timely follow the guidelines included within that decision and appeal to the District Court of Iowa. I have no authority to overturn a decision made by another administrative law judge or the Employment Appeal Board.

DECISION:

The representative's decision dated May 7, 2014, reference 06, is affirmed. The decision of the administrative law judge dated April 15, 2014, reference 02, is still in effect. Claimant's proper

recourse is through the procedures detailed on the front page the Employment Appeals Board decision of May 29, 2014.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css