

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COURTNEY D LYTLE
Claimant

APPEAL NO. 12A-UI-08366-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/19/12
Claimant: Appellant (1)**

Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 2, 2012, reference 04, decision that concluded he had been overpaid unemployment insurance benefits in the amount of \$3,109.00 for 13 weeks between February 19, 2012 and May 19, 2012 as a result of a disqualification decision entered by an administrative law judge on May 29, 2012. After due notice was issued, a hearing was held on August 29, 2012. The claimant participated in the hearing. Exhibits A and B and Department Exhibits D-1 through D-4 were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant (DBRO) and of the decision docketing record (NMRO).

ISSUE:

Whether the claimant was overpaid unemployment insurance benefits in the amount of \$3,109.00 for 13 weeks between February 19, 2012 and May 19, 2012

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Courtney Lytle established a claim for unemployment insurance benefits that was effective February 19, 2012. Mr. Lytle received unemployment insurance benefits in the amount of \$3,109.00 for 13 weeks between February 19, 2012 and May 19, 2012. On April 2, 2012, a workforce development representative entered a reference 01 decision that allowed benefits, provided Mr. Lytle was otherwise eligible. The decision was based on Mr. Lytle's February 21, 2012 discharge from Glenn's Copier, Inc. The decision was based on a March 30, 2012 fact-finding interview in which both parties participated. Glenn Kellen, owner of Glenn's Copier, Inc., had represented the employer at the fact-finding interview.

The employer appealed the agency representative's decision allowing benefits and on May 3, 2012 and May 24, 2012, the parties participated in an appeal hearing in Appeal Number 12A-UI-04100-ET. On May 29, 2012, Administrative Law Judge Julie Elder entered a decision that reversed the April 2, 2012, reference 01, decision that had allowed benefits. Judge Elder concluded Mr. Lytle had been discharged from Glenn's Copier, Inc., for misconduct in connection with the employment. Judge Elder disqualified Mr. Lytle for unemployment

insurance benefits until he had worked in and been paid wages for insured work equal to ten times his weekly benefit amount.

On June 8, 2012, Mr. Lytle appealed Judge Elder's disqualification decision concerning his separation from Glenn's Copier, Inc. See Hearing Number 12B-UI-04100. Mr. Lytle's appeal from the administrative law judge's disqualification decision is still pending before the Employment Appeal Board.

The overpayment issue in this matter is based on Judge Elder's May 29, 2012 disqualification decision in Appeal Number 12A-UI-04100-ET.

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.

At present, there is an administrative law judge decision that disqualified Mr. Lytle for unemployment insurance benefits in connection with a February 21, 2012 discharge from Glenn's Copier, Inc. Unless and until that disqualification decision is reversed by the Employment Appeal Board in connection with the pending appeal, or is subsequently reversed by an Iowa District Court Or Appellate Court, Mr. Lytle remains bound by the disqualification decision. The administrative law judge is bound in this overpayment matter by the disqualification decision that said Mr. Lytle was disqualified for unemployment insurance benefits. Due to the disqualification decision entered by Judge Elder, the undersigned

administrative law judge must conclude that the \$3,109.00 Mr. Lytle received for 13 weeks between February 19, 2012 and May 19, 2012 was an overpayment of unemployment insurance benefits under Iowa Code section 96.3(7). Because the employer participated in the March 30, 2012 fact-finding interview that led to the April 2, 2012 reference 01 decision that initially allowed benefits, Mr. Lytle is not eligible for a waiver of the repayment requirement.

DECISION:

The July 2, 2012, reference 04, decision is affirmed. The claimant was overpaid unemployment insurance benefits in the amount of \$3,109.00 for 13 weeks between February 19, 2012 and May 19, 2012. The claimant must repay that amount.

As the administrative law judge indicated to Mr. Lytle at the time of the appeal hearing, Mr. Lytle has the right to appeal this decision if he disagrees with it and will need to immediately file an appeal from this decision if he wishes to avoid waiving his right to challenge the present decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw