

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALBERT LOPEZ

Claimant

APPEAL NO. 10A-UI-EUCU-00808-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/05/09
Claimant: Appellant (1-R)**

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated August 31, 2010, reference 02, which held the claimant had been overpaid the sum of \$392.00 in emergency unemployment compensation benefits. After due notice, a telephone conference hearing was scheduled for and held on October 18, 2010. The claimant participated. The record consists of the testimony of Albert Lopez. Official notice is taken of agency records. This matter was heard in conjunction with 10A-UI-12263-VST and 10A-EUCU-00807-VST.

ISSUE:

Whether the claimant has been overpaid emergency unemployment compensation benefits.

FINDINGS OF FACT:

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

The claimant was laid off from his full-time job with Featherlite in Cresco, Iowa. He established an original claim for unemployment insurance benefits on July 5, 2009. He was paid one week of emergency unemployment compensation benefits for the one week ending July 10, 2010, in the amount of \$392.00. The claimant was not eligible to receive this week of emergency unemployment compensation benefits, because he was monetarily eligible for regular unemployment on a July 4, 2010 claim.

The claimant was disqualified by the agency from receiving unemployment compensation benefits on the claim with an original claim date of July 4, 2010. The agency decision was reversed by the administrative law judge in 10A-UI-12263-VST.

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 evidence in this case established that the claimant was paid one week of emergency unemployment compensation benefits for the week ending July 10, 2010, in the amount of \$392.00. The agency had previously determined that the claimant was disqualified from receiving unemployment insurance benefits on his claim of July 4, 2010. That decision has now been reversed by the administrative law judge. This matter is therefore remanded to the claims section to determine the amount of any overpayment given the decision that the claimant is qualified for benefits on his July 4, 2010, claim.

DECISION:

The representative's decision dated August 30, 2010, reference 02, is affirmed. This matter is remanded to the claims section to determine the amount of the overpayment, since the prior disqualification on the July 4, 2010, claim has been reversed by the administrative law judge in 10A-UI-12263-VST.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vis/kjw