

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE C NUNEZ

Claimant

APPEAL NO. 10A-UI-09190-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/13/09

Claimant: Appellant (1)

Section 96.5-2-a – Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 18, 2010, reference 03, which held claimant had been overpaid unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 23, 2010. The claimant participated personally. The claimant was represented by Todd Richard, Attorney at Law. Official notice is taken of agency records. The record consists of the testimony of Jesse Nunez and agency records.

ISSUE:

Whether the claimant has been overpaid unemployment insurance benefits.

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:

An administrative law judge decision was filed on March 5, 2010, which held that the claimant was not eligible for unemployment insurance benefits. This decision also remanded the issue of the overpayment of benefits to the agency for determination. The claimant did not file an appeal of the administrative law judge's decision with the Employment Appeal Board. On June 18, 2010, a decision (reference 03) was issued concerning the overpayment. The claimant was informed that he had been overpaid unemployment insurance benefits in the amount of \$4,480.00 for ten weeks between December 13, 2009, and February 27, 2010, as a result of the administrative law judge's decision dated March 5, 2010. The claimant received these benefits. The employer participated in the fact-finding interview.

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 claimant has been overpaid the sum of \$4,480.00 in unemployment insurance benefits between December 13, 2009, and February 27, 2010. These benefits must be repaid by the claimant.

DECISION:

The decision of the representative dated June 18, 2010, reference 03, is affirmed. The sum of \$4,480.00 in unemployment insurance benefits must be repaid by the claimant.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css