

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MARK L TUBBS  
1350 WASHINGTON AVE  
RENWICK IA 50577

IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT

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Appeal Number: 04A-UI-00936-RT  
OC: 10-19-03 R: 01  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant, Mark L. Tubbs, filed a timely appeal for appeal number 04A-UI-00260-RT. This appeal was treated as a timely appeal from another unemployment insurance decision dated January 30, 2004, reference 02, determining that the claimant was overpaid unemployment insurance benefits. After due notice was issued, a telephone hearing was held on January 30, 2004 for appeal number 04A-UI-00260-RT. The claimant participated in the hearing and was represented by an attorney, Monty L. Fisher, Attorney at Law. This appeal was consolidated with that appeal, number 04A-UI-00260-RT, for the purposes of the hearing with the consent of the parties. Although there was no notice sent to the parties about this appeal, the parties permitted the administrative law judge to take evidence on and decide the issue as to whether the claimant would be overpaid unemployment insurance benefits, which is the issue in this

appeal. The parties waived further notice of that issue. Although there was no employer or respondent noticed or involved in this appeal, the employer in the appeal with which this appeal was consolidated, Custom Made Products Company, participated by Rodney G. Naeve, Operations Manager. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant filed for unemployment insurance benefits effective October 19, 2003 and began receiving benefits which continued thereafter. The claimant receive unemployment insurance benefits in the amount of \$3,942.00 as follows: \$262.00 for benefit week ending October 25, 2003 (earnings \$198.00), and \$368.00 per week for 10 weeks from benefit week ending November 1, 2003 to benefit week ending January 3, 2004 in the amount of \$3,680.00. Total benefits received by the claimant is \$3,942.00. This amount is now shown as overpaid and is the subject of this appeal. In the decision in appeal number 04A-UI-00260-RT, the administrative law judge concluded that the claimant was not entitled to receive such unemployment insurance benefits because his separation from the employer, Custom Made Products Company, was disqualifying.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is overpaid unemployment insurance benefits in the amount of \$3,942.00. He is.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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 section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$3,942.00 since separating from the employer, Custom Made Products Company, on or about September 4, 2003 and filing for such benefits effective October 19, 2003. In appeal number 04A-UI-00260-RT, the administrative law judge concluded that the claimant was not entitled to receive such benefits because his separation from the employer was disqualifying. Accordingly, the administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$3,942.00 to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of January 30, 2004, reference 02, is affirmed. The claimant, Mark L. Tubbs is overpaid unemployment insurance benefits in the amount of \$3,942.00 for 11 weeks from benefit week ending October 25, 2003 to benefit week ending January 3, 2004.

pjs/b