

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN L KRINER
Claimant

APPEAL NO. 12A-EUCU-00102-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 02/28/10
Claimant: Appellant (4-R)

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Kevin Kriner filed an appeal from the March 1, 2012, reference 01, decision that he was overpaid \$9,200.00 in benefits for the 23-week period between February 21, 2010 and July 31, 2010 based on an earlier disqualification decision. After due notice was issued, a hearing was held on March 27, 2012. Mr. Kriner participated. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-EUCU-00101-JTT and the administrative law judge hereby takes official notice of the decision entered in that matter. Department Exhibits D-1, D-2, and D-3 were received into evidence. The administrative law judge took official notice of the Agency's administrative record (DBRO) of benefits disbursed to the claimant.

ISSUE:

Whether Mr. Kriner was overpaid \$9,200.00 in benefits for the 23-week period between February 21, 2010 and July 31, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 29, 2010, an Iowa Workforce Development representative entered the reference 01, decision that disqualified Mr. Kriner for benefits based on a February 25, 2010 voluntary quit from employer Karma, Inc. The decision was entered in connection with a February 28, 2010 original claim date. The March 29, 2010, reference 01 disqualification decision has been affirmed on appeal. See Appeal Number 12A-EUCU-00101-JTT.

Mr. Kriner did not receive any benefits based on the February 28, 2010 original claim date, but did receive extended or emergency benefits that were added to his March 1, 2009 original claim. Those benefits included \$8,825.00 in benefits disbursed for the 23-week period of February 21, 2010 through July 31, 2010. The benefits disbursed for that period included \$8,250.00 in emergency unemployment compensation (EUC) benefits and an additional \$25.00 per week in federal stimulus (FAUI) benefits. The total amount of the federal stimulus benefits was \$575.00.

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.

Because the disqualification decision that prompted the overpayment decision has been affirmed on appeal, the administrative law judge concludes that the \$8,825.00 in benefits that were disbursed to Mr. Kriner for the period of February 21, 2010 through July 31, 2010 did indeed constitute an overpayment of benefits that Mr. Kriner is required to repay unless he is granted a waiver.

A waiver of an overpayment is available under some circumstances. See 871 IAC 24.50(7) and Public Law 110-252 section 4005(c). The question of whether the overpayment should be waived is remanded to the Unemployment Insurance Services Division. The agency shall notify Mr. Kriner in writing of whether the waiver of the overpayment is granted.

DECISION:

The Agency representative's March 1, 2012, reference 01, decision is modified only to correct the amount of the overpayment. The claimant was overpaid \$8,825.00 in benefits for the period of February 21, 2010 through July 31, 2010.

The question of whether the overpayment should be waived is remanded to the Unemployment Insurance Services Division.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs