

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT J TURNER
Claimant

APPEAL NO: 13A-UI-02127-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits/Waiver of Overpayment

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 18, 2013 determination (reference 03) that held he had been overpaid \$11,935.00 in benefits he received for the weeks ending July 14, 2012, through February 9, 2013. The overpayment occurred as the result of an administrative law judge's decision that reversed determination that had held him eligible to receive benefits. The claimant participated in the hearing with his attorney, David Hanson. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes that based on the administrative law judge's decision, the claimant has been overpaid \$11,935.00 in benefits.

ISSUES:

Has the claimant been overpaid benefits he received for the weeks ending July 14, 2012, through February 9, 2013?

Is the claimant eligible for a waiver of any overpayment?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of February 2, 2012. He reopened his claim during the week of July 8, 2012. The claimant and the president of Horkheimer Enterprises, Inc. participated at a fact-finding interview. As a result of information presented by both parties, a claims specialist issued a determination on August 3, 2012, that held the claimant eligible to receive benefits. The employer appealed this determination.

On August 29, 2012, an administrative law judge held a hearing. Both the claimant and employer participated at the hearing. Based on the evidence presented during the August 29 hearing, the administrative law judge reversed the August 3 determination and disqualified the claimant from receiving benefits as of July 8, 2012. See decision for appeal 12A-UI-09443-MT.

Even though the claimant made numerous inquiries about the status of the decision, he was repeatedly told to keep filing his weekly claims. The claimant received information that he was eligible to receive Emergency Unemployment Compensation benefits. The claimant did not

receive the decision for 12A-UI-09443-MT until he received the February 18, 2013 overpayment determination. The claimant appealed the administrative law judge's decision to the Employment Appeal Board and the overpayment determination to the Appeals Section on February 23, 2013.

The claimant filed weekly claims for the weeks ending July 14, 2012, through February 9, 2013. He received his maximum weekly benefit amount of \$385 for each week. During the week ending December 22, 2012, he exhausted his regular unemployment insurance benefits. He started receiving Emergency Unemployment Compensation benefits the week of December 23, 2012.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7)b.

In this case, the initial determination held the claimant qualified to receive benefits. Later, an administrative law judge reversed the initial determination and held the claimant was not qualified to receive benefits. Based on the decision for 12A-UI-09443-MT, the claimant has been overpaid \$11,935.00 in benefits he received for the weeks ending July 14, 2012, through February 9, 2013. If the Employment Appeal Board reverses the administrative law judge's decision, then the claimant will not be overpaid any benefits.

If the Employment Appeal Board affirms the decision, the claimant is **not** at fault in receiving the overpayment. Since the employer participated at the initial proceedings, the claimant is not eligible for a waiver of regular unemployment insurance benefits. Regular unemployment insurance benefits totaling \$9,240.00 make up part of the \$11,935.00 overpayment. Based on Iowa Code § 96.3(7)b, this amount cannot be waived. The remaining amount, \$2,695.00, comes from Emergency Unemployment Compensation benefits. There is a waiver provision for these benefits that is separate from Iowa Code § 96.3(7)b. The amount of overpayment of benefits paid from Emergency Unemployment Compensation benefits will be remanded to the Claims Section to determine if the claimant is eligible for a waiver of this part of the overpayment.

DECISION:

The representative's February 18, 2013 determination (reference 03) is affirmed based on an administrative law judge's decision, 12A-UI-09443-MT. Since the claimant just recently received the decision for appeal 12A-UI-09443-MT, and appealed to the Employment Appeal Board, this decision may be moot if the Employment Appeal Board reverses the decision for appeal 12A-UI-09443-MT.

If the Employment Appeal Board affirms the decision for 12A-UI-09443-MT, the claimant is **NOT** at fault in receiving an \$11,935.00 overpayment. He is not eligible for a waiver of the regular unemployment insurance benefits he received for the weeks ending July 14, 2012 through December 22, 2012. Since he received \$2,695.00 in Emergency Unemployment Compensation

benefits, the issue of whether he is eligible for a waiver of this amount is **Remanded** to the Claims Section to determine if the Employment Appeal Board affirms the decision. If the Employment Appeal Board reverses the decision for 12A-UI-09443-MT, the claimant has not been overpaid any benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css