

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENT C SMITH
Claimant

APPEAL NO. 11A-UI-14152-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/04/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 21, 2011, reference 05, which held the claimant had been overpaid unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 22, 2011. The claimant participated. The record consists of the testimony of Kent Smith. Official notice is taken of 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:

The claimant established an original claim for benefits with an effective date of March 14, 2010. The claimant was awarded benefits by the representative in a decision dated October 11, 2010, reference 03. The employer appealed the decision to the Appeals Bureau. The administrative law judge reversed the representative's decision and held that the claimant was not eligible for unemployment insurance benefits (10A-UI-14409-HT). The claimant did not appeal this decision to the Employment Appeal Board. The claimant had been paid \$4,721.00 in unemployment insurance benefits for the twelve weeks between September 12, 2010, and December 4, 2010.

The employer participated in the fact-finding process.

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 established that the claimant received unemployment insurance benefits for which he was disqualified by a final decision of the administrative law judge in 10A-UI-14409. The claimant did not appeal the administrative law judge's decision to the Employment Appeal Board. He received \$4,721.00 in unemployment insurance benefits before he was disqualified. The claimant received these benefits in good faith. Because it was determined that he was not eligible to receive the benefits, the benefits must be repaid.

DECISION:

The representative's decision dated October 21, 2011, reference 05, is affirmed. The claimant has been overpaid \$4,721.00 in unemployment insurance benefits. These benefits must be repaid.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw