

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

ROBERT C SMITH

Claimant,

and

IOWA WORKFORCE DEVELOPMENT

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HEARING NUMBER: 09B-UI-12106

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant was discharged on January 15, 2009 and sought unemployment benefits. He received benefits for three weeks until he was disqualified by a claims decision dated February 10, 2009. The Claimant appealed that decision to an Administrative Law Judge. While this appeal was pending a claims representative decision was issued on June 30, 2009 assessing an overpayment of \$1,167 for the three weeks' benefits. **Subsequently**, the Administrative Law Judge held a hearing on the appeal of the January 15 disqualification decision. On August 19, 2009 the Administrative Law Judge issued a decision in case 02227 finding "Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements." The Claimant now challenges the overpayment decision.

REASONING AND CONCLUSIONS OF LAW:

We do not address the timeliness of the Claimant's appeal of the overpayment. An overpayment appeal is generally limited to whether an overpayment case be assessed under §96.3(7) and whether the amount of an overpayment is accurate. *Hensley v. Iowa Dept. of Job Service*, 336 N.W.2d 448 (Iowa 1983). If a disqualification is reversed by final agency action the conditions authorizing the overpayment have disappeared, and so too does the overpayment. Thus even if the overpayment appeal were untimely we would still reverse the overpayment on the basis that the disqualification has been removed. Timeliness of the overpayment appeal affects only issues related to the amount of the overpayment and whether it can be collected – not whether an overpayment should be assessed in the first place.

Turning to the merits it is clear there has been some misunderstanding by the Administrative Law Judge. We have double-checked all the records. The decision of the Administrative Law Judge on August 19, 2009 in case 02227 is a final decision. That decision **qualified** the Claimant for benefits. The claims representative decision that led to the overpayment has been reversed. Under these circumstances the overpayment must be removed.

DECISION:

The administrative law judge's decision dated March 8, 2006 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not overpaid benefits.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester