

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELOY PEREZ
Claimant

APPEAL NO. 10A-UI-08051-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT
Employer

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

Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated June 3, 2010, reference 01, which held the claimant had been overpaid unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 24, 2010. The claimant participated. Official notice is taken of agency records. The record consists of the testimony of the claimant and those 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 witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed by Blackhawk Foundry, a business that has now closed. Prior to the business closing, the claimant's work hours were not regular, as he would have some weeks where he only worked partial weeks. The agency determined that the claimant had been overpaid the amount of \$451.00 between March 29, 2009 and July 4, 2009. That overpayment has been offset against other benefits to which the claimant was entitled and at present the claimant does not owe any unemployment insurance benefits.

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 claimant testified that he is not certain what hours he worked and when between the dates of March 29, 2009 and July 4, 2009. He wanted "proof" that he had worked and therefore was not entitled to the unemployment insurance benefits that he received and later repaid via offset. The claimant did not have check stubs or tax records or any other information to dispute the information that was reported to the agency. If the claimant wanted to dispute the amount of wages reported either by him or his employer, it was incumbent upon him to have information to provide the administrative law judge at the time of the hearing. At present, the claimant does not have any overpayment, as the entire sum of \$451.00 has been recovered by offset.

DECISION:

The representative's decision dated June 3, 2010, reference 01, is modified in favor of the claimant. Any overpayment of benefits has been recovered and at present the claimant is not overpaid unemployment insurance benefits.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw