

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Lucas State Office Building
Des Moines, Iowa 50319

Appeal Number: 07-IWDUI-157
OC: 0/0/05
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JAMES D PLUEGER
19 LAURA DRIVE
SIOUX CITY IA 51031-2731

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

DANIEL HARTNETT ATTORNEY
CRARY/HUFF LAW FIRM
PO BOX 27
SIOUX CITY IA 51102-0027

DAN ANDERSON, IWD

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department . If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

November 30, 2007

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated October 22, 2007, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$8,032.00, because of a department decision dated May 18, 2007 that disqualified him as not being able and available for work.

After due notice was issued, a hearing was held by telephone conference call on November 26,

2007. The claimant, his wife, Susan Plueger, and Attorney, Dan Hartnett, participated. Iowa Workforce Development, Investigation and Recovery, did not participate.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having examined all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits with an effective date of November 19, 2006. The department issued a decision on May 17, 2007 that he was disqualified (not eligible) from receiving benefits on the effective date of his claim, as he was not able and available for work. The department decision has now been affirmed (See Appeal #07-IWDUI-156).

Although the claimant timely appealed the overpayment decision, he did not timely appeal the disqualifying decision that caused the overpayment. The claimant acknowledged that he did receive benefits totaling \$8,032 from the effective date of his claim, November 19, 2006 to May 18, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$8,032.00.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

If the division 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.

The administrative law judge concludes that the claimant is overpaid benefits \$8,032.00 for the 25-week period ending May 18, 2007, 2005 pursuant to Iowa Code Section 96.3-7. Although the claimant timely appealed the department overpayment decision, he failed to timely appeal the disqualification decision, such that this issue is not reviewable in this matter.

DECISION:

The decision of the representative dated October 22, 2007, reference 02 is AFFIRMED. The claimant is overpaid benefits \$8,032.00.

rls