

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES D BROWN
Claimant

APPEAL NO. 12A-UI-04765-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/23/10
Claimant: Appellant (1)**

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

James Brown filed an appeal from the April 20, 2012, reference 05, decision that he was overpaid \$3,990.00 in benefits for the 10-week period of September 19, 2010 through November 27, 2010 due to a January 7, 2011 decision concerning his ability to perform work. After due notice was issued, a hearing was held on May 17, 2012. Mr. Brown participated. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-04764-JTT. The administrative law judge took official notice of the Agency's administrative record (DBR) of benefits paid to the claimant.

ISSUE:

Whether Mr. Brown was overpaid \$3,990.00 in benefits for the ten-week period of September 19, 2010 through November 27, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Brown established a claim for unemployment insurance benefits that was effective May 23, 2010. Mr. Brown received benefits that included \$3,366.00 in regular state benefits for the nine-week period of September 19, 2010 through November 27, 2010. The benefits Mr. Brown received also included \$374.00 in emergency unemployment compensation (EUC) benefits for the week ending November 27, 2010. The benefits Mr. Brown received also included \$250.00 in special federal stimulus benefits for the ten-week period of September 19, 2010 through November 27, 2010. In all, Mr. Brown received benefits totaling \$3,990.00 for the ten-week period of September 19, 2010 through November 27, 2010. Mr. Brown discontinued his claim for benefits after November 27, 2010.

On January 7, 2011, a Workforce Development representative entered a reference 02 decision that denied benefits effective September 23, 2010 based on an agency conclusion that Mr. Brown was not able to work. Mr. Brown did not file a timely appeal from the January 7, 2011, reference 02, decision and that decision became a final agency decision. See Appeal Number 12A-UI-04764-JTT. It was the January 7, 2011, reference 02, decision that prompted the overpayment decision at issue in this matter.

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.

Because the January 7, 2011, reference 02, disqualification decision became a final agency decision and is binding upon Mr. Brown, the administrative law judge concludes that the \$3,990.00 in benefits paid to Mr. Brown for the 10-week period of September 19, 2010 through November 27, 2010 did indeed constitute an overpayment of benefits. Mr. Brown is required to repay that amount to the agency.

Mr. Brown raised a concern about benefits having been withheld at some point and then being re-initiated at some later point. From a review of the agency's administrative record of benefits disbursed to Mr. Brown, the administrative law judge can see that no benefits were disbursed to Mr. Brown in connection with May 23, 2010 claim until July 7, 2010, at which time the agency released six weeks' worth of benefits for the period of May 23, 2010 through July 3, 2010. After that point, benefits were disbursed on a weekly basis through the week that ended November 27, 2010. Thus, the concern Mr. Brown raised about the temporary withholding of benefits and recommencing of benefits did not apply to the later period in question in this matter.

DECISION:

The Agency representative's April 20, 2012, reference 05, decision is affirmed. The claimant was overpaid \$3,990.00 in benefits for the ten-week period of September 19, 2010 through November 27, 2010. The claimant is required to repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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