

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L WHALEY
Claimant

APPEAL NO: 13A-UI-05128-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 11/11/12

Claimant: Appellant (4)

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Michael Whaley (claimant) appealed a representative's April 22, 2013 decision (reference 03) that concluded he had been overpaid unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was scheduled to be held on May 29, 2013. The claimant participated personally.

ISSUE:

The issue is whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

A representative issued a decision dated December 7, 2012 (reference 01) that concluded the claimant was eligible to receive unemployment insurance benefits after a separation from employment from Bethany Manor (employer). The employer timely appealed that decision. A hearing was held with an administrative law judge that issued a decision on January 18, 2013, in appeal 12A-UI-14772-MT reversing the representative's decision and finding the claimant ineligible for benefits due to the separation. The administrative law judge's decision included the following "The overpayment is waived because employer failed to make a meaningful participation at fact finding."

The claimant appealed that administrative law judge's decision to the Employment Appeal Board, which affirmed the administrative law judge's decision on March 8, 2013, in 13B-UI-14772.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was overpaid unemployment insurance benefits due to a disqualifying separation from employment, and recovery of that overpayment is not waived for the one-week period ending January 26, 2013.

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 administrative law judge's decision 12A-UI-14772-MT waived the overpayment and administrative law judge's decision to the Employment Appeal Board, which affirmed the administrative law judge's decision on March 8, 2013, in 13B-UI-14772. This administrative law judge has no jurisdiction or power to change the previous rulings of Administrative Law Judge Mormann or the Employment Appeal Board with regard to the overpayment through the nine-week period ending January 18, 2013. The claimant is overpaid for the one-week period ending January 26, 2013, as the claimant was disqualified for being discharged for misconduct in connection with his employment.

DECISION:

The representative's April 22, 2013 decision (reference 03) is modified in favor of the appellant. The claimant was overpaid unemployment insurance benefits due to a disqualifying separation from employment, and recovery of that overpayment is not waived for the one-week period ending January 26, 2013.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css