

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON G MORRIS
Claimant

APPEAL NO: 10A-UI-16069-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/05/09
Claimant: Appellant (1)**

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 17, 2010 determination (reference 12) that held him overpaid \$4140 in Emergency Unemployment Compensation benefits he received from August 29 through November 6, 2010. The overpayment occurred as the result of a representative's November 12, 2010 determination. The claimant participated the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds the claimant has been overpaid \$4140 in Emergency Unemployment Compensation benefits.

ISSUES:

Has the claimant been overpaid \$4140 in Emergency Unemployment Compensation benefits he received from August 29 through November 6, 2010?

FINDINGS OF FACT:

The claimant established claim for benefits during the week of April 5, 2009. He filed for and received Emergency Unemployment Compensation benefits for the weeks September 4 through November 6, 2010. He received his maximum weekly benefit amount of \$389 each week. He also received an additional \$25 each week from the government's economic stimulus program.

The claimant appealed the representative's November 12, 2010 determination that held he was not eligible to receive Emergency Unemployment Compensation benefits as of August 29, because he was instead eligible to receive regular unemployment insurance. This determination has been affirmed. See decision for 10A-UI-16068-DWT.

When the claimant filed for unemployment insurance benefits he gave the local representative any information they requested and followed their directions. The claimant did not know or understand he was required to establish a new benefit year if he had enough wages to establish and receive regular unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. Based on the decision for appeal 10A-UI-16068-DWT, the claimant is not legally entitled to receive Emergency Unemployment Compensation benefits as of August 29, 2010.

The claimant relied on the Department's expertise to make sure he only received benefits he was legally entitled to receive, but the Department made a mistake. The claimant is NOT at fault in receiving the \$4140 in benefits he received (Emergency Unemployment Compensation benefits) for the weeks ending September 4 through November 6, 2010.

Since the Department made the mistake and did not pick up on the fact the claimant was eligible to receive regular unemployment as of August 29, 2010, until mid-November, should this overpayment be waived?

The "Temporary Extended Unemployment Compensation" (TEUC) program was created by the "Job Creation and Worker Assistance Act of 2002." Public Law 107-147. It provided 13 weeks (later 26 weeks) of federally-funded TEUC benefits for regular benefit exhaustees. Under §206(b) of the law, a state was required to recover overpayments from claimants who had been overpaid TEUC benefits unless the state, under the optional language of § 206(b), elected to waive repayment of the TEUC overpayment. States could elect to implement a TEUC waiver procedure even if they had no waiver provision under state law for regular compensation. Unemployment Insurance Program Letter No. 30-02 (Pursuant to federal law then, Iowa elected to implement a TEUC waiver procedure, which resulted in 871 IAC 24.50(7) permitting waiver of an overpayment of "temporary extended unemployment compensation." TEUC benefits were payable through the week of April 3, 2004. Public Law 108-26. The TEUC program no longer exists.

The Emergency Unemployment Compensation (EUC) program was created by Public Law 110-252 in 2008. It initially provided 13 weeks additional weeks of federally-funded EUC benefits to persons who had exhausted regular unemployment benefits, which has been extended several times. P.L. 110-252 has its own specific provisions regarding overpayments and waivers of overpayment. §4005(b) states that:

REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

- (1) the payment of such emergency unemployment compensation was without fault on the part of any such individual; and
- (2) such repayment would be contrary to equity and good conscience.

DOL's implementation instructions for §4005(b) provide that a state **can** elect to waive recovery of nonfraudulent EUC overpayments, **provided** the state has a waiver provision for regular compensation **or** adopts a waiver provision for EUC that meets the federal waiver standard of (A) the payment of EUC was without fault on the part of the individual, and (B) such repayment would be contrary to equity and good conscience. UIPL No. 23-08, Attachment A. There is no mandate that a state who does not have an overpayment waiver provision for regular benefits to create one for EUC.

The Department has not adopted the optional EUC waiver procedure. Therefore 871 IAC 24.50(7) does not apply to EUC because it is a separate federal program from TEUC. In the absence of an express waiver provision, the claimant's overpayment cannot be waived in Iowa.

As of January 17, 2010, offsets from benefits the claimant is entitled to receive have reduced his total overpayment, which includes an additional overpayment of \$2484 from the decision for appeal 10A-UI-16067-DWT, to \$2698.46.

DECISION:

The representative's November 17, 2010 determination (reference 12) is affirmed. The claimant was not legally entitled to receive Emergency Unemployment Compensation benefits for the weeks ending September 4 through November 6, 2010. Even though he is NOT at fault in receiving the overpayment, he is required to repay this to the Department.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs