

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**STEVEN J STAERK**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL NO. 15A-UI-11115-DGT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/02/15**  
**Claimant: Appellant (4)**

Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Claimant appealed a representative's decision dated September 30, 2015, reference 04, that concluded claimant was overpaid unemployment insurance as a result of a disqualification decision. A hearing was scheduled and held on October 20, 2015 pursuant to due notice. Claimant did participate.

**ISSUE:**

The issue is whether claimant is overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: The overpayment issue in this case was created by two disqualification decisions. Appeal number 15A-UI-11113-DG which involved vacation pay was affirmed, and 15A-UI-11114-DG which involved severance pay was reversed. Therefore, claimant is overpaid \$463.00 for the one week ending August 8, 2015. The remaining overpayment balance is not owed because the decision that held that claimant was disqualified from benefits because of severance pay has been reversed.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 concludes that claimant is overpaid unemployment insurance benefits in the amount of \$463.00 for the one week ending August 8, 2015, pursuant to Iowa Code section 96.3-7 as the disqualification decision that held claimant received vacation pay has been affirmed. The decision that claimant received severance pay has been reversed, and any benefits that were withheld as a result of that decision shall be paid to the claimant.

**DECISION:**

The decision of the representative dated September 30, 2015, reference 04, is modified in favor of the appellant. Claimant is overpaid unemployment insurance benefits in the amount of \$463.00.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/pjs