

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK J MUMM
Claimant

APPEAL NO. 11A-UI-06166-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/31/10
Claimant: Appellant (1)**

Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

Patrick Mumm filed a timely appeal from the May 3, 2011, reference 04, decision that concluded he had been overpaid unemployment insurance benefits in the amount of \$301.00 as a result of an April 29, 2011 decision that denied emergency unemployment insurance benefits on the Iowa claim effective January 31, 2011 based on an Agency conclusion that because Mr. Mumm was monetarily eligible for regular benefits on a Nebraska claim effective January 30, 2011. After proper notice to the claimant, a hearing took place on May 25, 2011. Mr. Mumm participated. Exhibit A was received into evidence. The administrative law judge took official notice of the database readout material (DBRO) concerning the weekly benefit amount, the claimant's request to have income taxes withheld from benefits, as well as the wages reported and the benefits disbursed for the week ending February 5, 2011.

ISSUE:

Whether Mr. Mumm was overpaid unemployment insurance benefits in the amount of \$301.00 for the week ending February 5, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Mumm concedes that he was not eligible for emergency unemployment insurance benefits for the week ending February 5, 2011 on the Iowa claim. On April 29, 2011, a Workforce Development representative entered a reference 03 decision that denied emergency unemployment insurance benefits on the Iowa claim effective January 31, 2011 because Mr. Mumm was monetarily eligible for regular unemployment insurance benefits on a Nebraska claim effective January 30, 2011. For the week ending February 5, 2011, Iowa Workforce Development disbursed \$301.00 in gross unemployment insurance benefits to Mr. Mumm. In accordance with Mr. Mumm's request at the time his claim year began in January 2010, Iowa Workforce Development withheld both Iowa and federal income taxes from the unemployment insurance benefits and issued net benefits of \$255.85. Mr. Mumm does not dispute that he has to repay the \$255.85. Instead, Mr. Mumm challenges the requirement that he repay to Iowa workforce development the amount of the state and federal income tax withholding, \$45.15.

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 decision that Mr. Mumm was overpaid emergency unemployment insurance benefits for the week ending February 5, 2011 was based on a disqualification decision entered on April 29, 2011. The disqualification decision remains in effect and Mr. Mumm does not challenge the disqualification decision. Nor does Mr. Mumm challenge the notion that he was overpaid benefits for the week ending February 5, 2011. Mr. Mumm's challenge is limited to whether he must repay the net amount deposited in his account, \$255.85, or the gross amount disbursed to him, \$301.00. But for Mr. Mumm's election at the beginning of the claim year to have income taxes withheld from his benefits, the gross amount of \$301.00 would have been deposited in his account for the week ending February 5, 2011. Solely due to Mr. Mumm's directive, Workforce Development disbursed the appropriate amount of tax withholding to the appropriate Iowa and federal revenue service. In other words, the tax withholding amount, like the net amount deposited in Mr. Mumm's account, has gone out from Workforce Development and is no longer available to the Agency. But the tax withholding amount has indeed been disbursed to Mr. Mumm and will be available to him as income tax withholding at the time he files his 2011 income tax returns. In other words, the gross amount of \$301.00 in benefits has indeed been disbursed to Mr. Mumm for the week ending February 5, 2011 and it is that amount to Mr. Mumm must repay to Iowa Workforce Development.

DECISION:

The May 3, 2011, reference 04 decision is affirmed. The claimant was overpaid unemployment insurance benefits in the amount of \$301.00 for the week ending February 5, 2011 and must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs