

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH K LEABO
Claimant

APPEAL NO. 09A-UI-07900-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 11/30/08
Claimant: Appellant (5)

Iowa Code Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

Joseph Leabo filed an appeal from the May 19, 2009, reference 02, decision that he was overpaid \$3,256.00 in regular unemployment insurance benefits for the 28-week period ending April 18, 2009 because he did not meet the minimum earnings requirement to be eligible for benefits in a second benefit year. After due notice was issued, a hearing was held by telephone call on June 16, 2009. Mr. Leabo participated. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to Mr. Leabo in connection with the benefit year that started December 2, 2007 and the new benefit year that started November 30, 2008. The hearing in this matter was consolidated with the hearing in Appeal Number 09A-UI-07899-JTT. The administrative law judge hereby takes official notice of the decision entered in that matter. The administrative law judge has taken official notice of the Agency's administrative record regarding reduction of the overpayment amount yet to be recovered.

ISSUE:

Whether claimant was overpaid \$3,256.00 in regular unemployment insurance benefits for the period of November 30, 2008 through April 18, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joseph Leabo established a new original claim for regular unemployment insurance benefits that was effective November 30, 2008. In connection with that claim, Mr. Leabo received regular benefits totaling \$6,699.50 for the period of November 30, 2008 through April 18, 2009.

On April 23, 2009, Workforce Development mailed a copy of the reference 01 disqualification decision to Joseph Leabo's last-known address of record. The reference 01 decision denied regular unemployment insurance benefits effective November 30, 2008 and concluded that Mr. Leabo did not meet the minimum earnings requirements to be eligible for unemployment insurance benefits during a second benefit year. The reference 01 decision has been affirmed on appeal. See Appeal Number 09A-UI-07899-JTT.

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 disqualification decision that denied benefits during a second benefit year—the decision that prompted the overpayment decision—has been affirmed on appeal, the administrative law judge concludes there was indeed an overpayment of regular unemployment insurance benefits during the period of November 30, 2008 through April 18, 2009. The actual amount of the overpayment of regular benefits was \$6,699.50, not including the \$25.00 per week extra benefits paid out under as a result of the federal stimulus package. The actual duration of the period involved in the overpayment was 20 weeks, not 28 weeks.

Workforce Development records indicate that the overpayment amount to be recovered from Mr. Leabo was reduced through an offset of extended unemployment insurance benefits. Workforce Development records indicate that the remaining overpayment balance is \$2,735.50.

DECISION:

The Agency representative's May 19, 2009, reference 02, overpayment decision is modified as follows. The claimant was overpaid regular unemployment insurance benefits of \$6,699.50 for the 20-week period of November 30, 2008 through April 18, 2009. The overpayment amount to be recovered was reduced through an offset of extended unemployment insurance benefits and currently stands at \$2,735.00. The claimant must repay that amount to Iowa Workforce Development.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs