

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY L DAVIS**  
Claimant

**APPEAL NO. 11A-UI-12922-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 02/14/10  
Claimant: Appellant (4)**

Section 96.3-7 – Overpayment of Benefits  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated September 20, 2011, reference 03, which held claimant had been overpaid \$2260.00 in unemployment insurance benefits for the six weeks between February 21, 2010, and April 3, 2010. After due notice, a telephone conference hearing was scheduled for and held on October 24, 2011. Claimant participated. This case was heard in conjunction with 11A-UI-12921-VST.

**ISSUE:**

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns a construction company. The claimant was placed on temporary layoff by the employer on February 14, 2010. The claimant then established an original claim for benefits on February 14, 2010. Benefits were paid for the weeks ending February 27, 2010, through April 3, 2010. The claimant was discharged for misconduct by the employer on March 12, 2010.

The representative found that the claimant had been overpaid unemployment insurance benefits for the six weeks between February 21, 2010, and April 3, 2010, due to a disqualification decision dated April 8, 2010. The discharge did not take place until March 12, 2010. For the weeks ending March 20, 2010, through April 3, 2010, the claimant received \$1,153.00 in unemployment insurance benefits, which includes \$75.00 in stimulus payments.

## REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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.

In this case, the representative determined that there was an overpayment of benefits for the six-week period between February 21, 2010, and April 3, 2010, based on a disqualification decision issued on April 8, 2010. The disqualification, however, was due to a discharge for misconduct that did not take place until March 12, 2010. Until that point, the claimant had been laid off by the employer and was eligible for benefits. The disqualification only applied to the weeks ending March 20, 2010; March 27, 2010; and April 3, 2010. The total amount of the overpayment is thereby reduced to \$1,153.00.

**DECISION:**

The representative's decision dated September 20, 2011, reference 03, is modified in favor of the appellant. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,153.00.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw