

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NESTOR Y RUIZ
Claimant

APPEAL 19A-UI-08523-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/28/19
Claimant: Appellant (5)

Iowa Code § 96.3-7 - Recovery of Overpayment of Benefits
871 IAC 23.43(9)a – Cross Wage Claim Relief of Charges
871 IAC 616.8(e) – Responsibilities of the Paying State

STATEMENT OF THE CASE:

Nestor Ruiz (claimant) appealed a representative's October 25, 2019 decision (reference 04) that concluded his Illinois overpayment of unemployment insurance benefits would be withheld from his Iowa claim. After hearing notices were mailed to the claimant's last-known addresses of record, a telephone hearing was scheduled for November 21, 2019. The claimant participated personally. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the withholding of Iowa unemployment benefits to recover a prior overpayment in another state is valid.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant has an overpayment for unemployment insurance benefits in the state of South Dakota, not Illinois. The state of South Dakota requested that the state of Iowa collect that overpayment. The claimant contacted South Dakota and discussed payment arrangements.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the withholding of Iowa unemployment benefits to recover a prior overpayment in the state of South Dakota is valid.

Iowa Code section 96.3(7)a-b, 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) (a) 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

(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.

42 42 USC 503 (g)(1) provides:

(g) Recovery of unemployment Benefit Payments

(1) A State shall deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

20 CFR 616.8(e) provides:

(e)*Recovery of prior overpayments.* If there is an overpayment outstanding in a transferring State and such transferring State so requests, the overpayment shall be deducted from any benefits the paying State would otherwise pay to the claimant on his/her Combined-Wage Claim except to the extent prohibited by the law of the paying State. The paying State shall transmit the amount deducted to the transferring State or credit the deduction against the transferring State's required reimbursement under this arrangement. This paragraph shall apply to

overpayments only if the transferring State certifies to the paying State that the determination of overpayment was made within 3 years before the Combined-Wage Claim was filed and that repayment by the claimant is legally required and enforceable against him/her under the law of the transferring State.

The requirements of the statute have been met. The withholding of Iowa unemployment benefits to recover a prior overpayment in the state of South Dakota is valid.

DECISION:

The representative's October 25, 2019 decision (reference 04) is modified with no effect. The withholding of Iowa unemployment benefits to recover a prior overpayment in the state of South Dakota is valid.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn