

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRETCHEN R TATE
Claimant

APPEAL NO. 08A-UI-08536-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/06/08 R: 02
Claimant: Appellant (2-R)

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.4(4) – Monetary Eligibility

STATEMENT OF THE CASE:

Claimant appealed the September 23, 2008, reference 04, decision that concluded claimant was overpaid unemployment insurance benefits in the amount of \$383.00 as a result of a separation disqualification decision. A telephone hearing was held on October 9, 2008, pursuant to due notice. Claimant participated.

ISSUE:

The issue is whether claimant is overpaid benefits for the four-week period ending August 30, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The overpayment issue in this case was created by a separation disqualification decision that has now been modified in favor of the appellant but remanded to determine claimant's monetary eligibility, which may result in a reduction or denial of benefits. Furthermore, the separation date was modified from July 6 to August 11, 2008, and a remand for determination of claimant's availability for work for that period is also ordered. Any action taken on that remand may affect benefit payments for that period as well.

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.

Iowa Code § 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$383.00 as stated by the representative's decision. However, since there are remands on the issues of claimant's monetary eligibility and availability for work, that figure may be reinstated or modified by those determinations.

DECISION:

The September 23, 2008, reference 04, decision is reversed and remanded. Claimant has not been overpaid unemployment insurance benefits in the amount of \$383.00 based upon the reference 01 representative's separation decision.

REMAND:

The possible overpayment issue, as associated with the monetary eligibility status and availability issue as delineated in the findings of fact, is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw