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

JAMES C AVENSON
Claimant

**IOWA WORKFORCE
  DEVELOPMENT DEPARTMENT**

APPEAL NO. 09A-UI-05084-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/14/08
Claimant: Appellate (1)

Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

James C. Avenson filed a timely appeal from an unemployment insurance decision dated March 19, 2009, reference 04, that ruled he had been overpaid unemployment insurance benefits in the gross amount of $1,708.00 for the 12 weeks ending March 7, 2009 because of a decision holding him ineligible for benefits for failing to meet the second benefit year earnings requirement. After due notice was issued, a telephone hearing was held April 27, 2009 with Mr Avenson participating.   This matter is considered on a consolidated record with 09A-UI-05083-AT. The administrative law judge takes official notice of Agency benefit payment records.

ISSUES:

Has the claimant been overpaid?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: James C. Avenson received unemployment insurance benefits in the gross amount of $1,708.00 for the 12 weeks ending March 7, 2009. In the companion decision, this administrative law judge has affirmed the prior decision holding him ineligible for unemployment insurance benefits for failing to meet the second benefit year earnings requirement.

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.

Mr. Avenson has received unemployment insurance benefits to which he is not entitled. Although he is not at fault for the overpayment, the law requires that benefits paid in error be repaid in any event.

DECISION:

The unemployment insurance decision dated March 19, 2009, reference 04, is affirmed. The claimant has been overpaid by $1,708.00 for the 12 weeks ending March 7, 2009.

_____
Dan Anderson
Administrative Law Judge

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Decision Dated and Mailed

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