

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL L MYERS
Claimant

APPEAL NO. 10A-EUCU-00176-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/13/09
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated February 22, 2010, reference 02, that held he is overpaid benefits \$3,285.00 effective December 13, 2009, because of a department decision he failed to earn \$250.00 during or after his previous benefit year. A telephone hearing was held on April 28, 2010. The claimant participated.

ISSUE:

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds that: The claimant's overpayment is the result of a department decision that has been affirmed (Appeal Number 10A-EUCU-00175-ST). The claimant received benefits of \$3,285.00 before the department recognized he was not eligible. The department has been collecting benefit payments by offset now that the claimant is eligible (April 4, 2010), which is reducing the overpayment amount.

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.

The administrative law judge concludes that the claimant is overpaid benefits \$3,285.00.

The law allows the department to recover overpaid benefits whether it is at fault or the claimant is at fault. Since the claimant is now eligible for benefits, the department is reducing the overpayment by offsetting those benefits.

DECISION:

The decision of the representative dated February 22, 2010, reference 02, is affirmed. The claimant is overpaid benefits \$3,285.00.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css