

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THEODORE P WRIGHT
Claimant

APPEAL NO. 13A-UI-12173-M

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/22/12
Claimant: Appellant (4R)**

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated October 24, 2013, reference 05, that concluded claimant was overpaid unemployment insurance as a result of a disqualification decision. A hearing was scheduled and held on November 25, 2013 pursuant to due notice. Claimant did participate. Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The overpayment issue in this case was created by incorrect reporting of wages earned. Claimant reported wages when received and not when worked. Claimant started working a part-time teaching assignment January 20, 2013. The assignment ended May 18, 2013. Claimant earned a gross pay of \$5,190.00 during the 17-week contract period. Claimant was on spring break during the week ending March 23, 2013 and earned his salary that week unabated.

Claimant also asserts that a travel allowance should not be reportable income. Unfortunately the travel stipend was just a calculation. The travel stipend was not split out of the reported earnings. Claimant was found overpaid \$2,587.75 for the period January 20, 2013 through May 4, 2013. The 17 weeks of gross contract pay average \$305.00 per week.

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 claimant is overpaid unemployment insurance benefits in the amount for the period January 20, 2013 through May 4, 2013, pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now been modified. Claimant should have reported \$305.00 per week for the 17 weeks of the employment contract. The week of spring break was paid just like all the other weeks and was clearly in the middle of the teaching contract term. Claimant was obligated to report earnings for spring break just like any other week. The teaching assignment ended May 18, 2013 and as such the total earnings must be divided by 17 weeks. Each week should have a report of \$305.00 in wages. This matter is remanded for a recalculation of the overpayment based on weekly reportable earnings of \$305.00 for every week including spring break.

DECISION:

The decision of the representative dated October 24, 2013, reference 05, is modified and remanded. Claimant shall have the overpayment of unemployment insurance benefits recalculated for the period January 20, 2013 through May 4, 2013 based on reportable earnings of \$305.00 for every week.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs