

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLY J STEWART

Claimant

APPEAL NO. 11A-EUCU-00796-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/12/10

Claimant: Appellant (4)

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Billy Stewart filed a timely appeal from the October 21, 2011, reference 02 unemployment insurance decision that he was overpaid \$8,776.43 in benefits for the period of April 3, 2011 through October 8, 2011. After due notice was issued, a telephone hearing was held on December 15, 2011. Mr. Stewart participated and presented additional testimony through Katherine Ivey, Unemployment Insurance Claims Investigator with the Tennessee Department of Labor and Workforce Development. Department Exhibits D-1 through D-4 were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-EUCU-00795-JTT.

ISSUE:

Whether Mr. Stewart was overpaid \$8,776.43 in benefits for the period of April 3, 2011 through October 8, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Billy Stewart established an Iowa combined wage claim for unemployment insurance benefits that was effective December 12, 2010 and received benefits. Mr. Stewart initially received \$4,950.77 in regular unemployment insurance benefits for the period of December 12, 2010 through the benefit week that ended March 26, 2011. Mr. Stewart then began receiving extended unemployment insurance benefits (EUC) on the Iowa Claim. Mr. Stewart received \$9,109.43 in EUC benefits on the Iowa claim for the 28-week period of March 27, 2011 through October 8, 2011. \$8,776.43 of those benefits were for the period of April 3, 2011 through October 8, 2011. \$3,996.00 of those benefits were for the period of April 3, 2011 through June 25, 2011.

In October 2011, Iowa Workforce Development discovered that Mr. Stewart had likely been monetarily eligible for regular benefits on a Tennessee claim effective April 3, 2011. Though Mr. Stewart was and is a resident of Tennessee, Mr. Stewart had made no previous inquiry regarding whether he might be eligible for unemployment insurance benefits through Tennessee. The Tennessee Department of Labor and Workforce Development subsequently

determined that Mr. Stewart had been eligible for \$1,484.00 in regular benefits for the period of April 3, 2011 through June 25, 2011 on the Tennessee combined wage claim. As of June 25, Mr. Stewart would have exhausted his eligibility for regular benefits under the Tennessee claim. Tennessee subsequently disbursed EUC benefits to Mr. Stewart for the three-week period of October 9, 2011 through October 29, 2011.

REASONING AND CONCLUSIONS OF LAW:

In companion Appeal Number 11A-EUCU-00795-JTT, the administrative law judge determined that the claimant was not an exhaustee during the period of April 3, 2011 through June 25, 2011 and was not eligible for benefits for that period. In companion Appeal Number 11A-EUCU-00795-JTT, the administrative law judge determined that the claimant was an exhaustee during the period of June 26, 2011 through October 8, 2011 and was eligible for EUC benefits on the Iowa claim for that period, provided he was otherwise eligible.

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.

Because the claimant was ineligible for the \$3,996.00 in EUC benefits he received for the period of April 3, 2011 through June 25, 2011, those benefits constitute an overpayment that the claimant must repay. Because the claimant was deemed an exhaustee during the period of June 26, 2011 through October 8, 2011, and was eligible for benefits provided he met all other eligibility requirements, there was no overpayment for the period of June 26, 2011 through October 8, 2011.

DECISION:

The Agency representative's October 21, 2011, reference 02, overpayment decision is modified as follows. The claimant was overpaid \$3,996.00 in EUCU benefits for the period of April 3, 2011 through June 25, 2011. The claimant must repay that amount. The claimant was not overpaid benefits for the period of June 26, 2011 through October 8, 2011 because he was an exhaustee during that period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css