IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DIEGO MELENDEZ
Claimant

IOWA WORKFORCE DEVELOPMENT DEPARTMENT

APPEAL NO. 12A-UI-13844-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/19/10
Claimant: Appellant (1)

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant appealed the November 16, 2012 (reference 09) representative's decision that concluded claimant is obligated to repay unemployment insurance benefits in the gross amount of $3,232.00 for the eight-week period ending April 23, 2011 as a result of an administrative law judge's disqualification decision dated June 3, 2011. A telephone hearing was scheduled to be held on December 13, 2012 pursuant to due notice. The claimant responded to the hearing notice instructions but was not available when the hearing was called and no hearing was held. Interpreter Ike Rocha was available and standing by for the hearing.

ISSUE:

Did the claimant receive and is he obligated to repay the gross amount of unemployment insurance benefits received for the period in question?

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 of an administrative law judge in appeal number 11A-UI-06001-ST. The employer participated in the initial fact-finding interview regarding the separation from employment and availability for work issues. Claimant did receive gross benefits in the amount of $3,232.00 for the eight-week period ending April 23, 2011.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant has been overpaid benefits for the period in question.

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 employer did participate in the fact-finding interview. The administrative law judge understands there was a 19-month delay between the substantive decision and the claims level overpayment decision, but must conclude that, claimant received benefits to which he was not entitled according to the administrative law judge's separation decision referenced above, which has become final. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The November 16, 2012, (reference 09), representative's decision is affirmed. The claimant has received unemployment insurance benefits in the amount of $3,232.00 to which he was not entitled and those benefits must be recovered in accordance with Iowa law.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/bjc