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

KIM A DIAZ
Claimant

APPEAL NO: 15A-UI-11279-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
 DEVELOPMENT DEPARTMENT**

**OC: 10/05/14
Claimant: Appellant (2)**

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated October 7, 2015, reference 04, that concluded the claimant was overpaid unemployment insurance benefits as a result of a disqualification decision. After a hearing notice was mailed to the claimant's last-known addresses of record, a telephone hearing was held on October 30, 2015. The claimant participated personally.

ISSUE:

The issue is whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, finds that: The overpayment issue in this case was created by a disqualification decision that has now been reversed.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant was not overpaid unemployment insurance benefits.

Iowa Code section 96.3(7)a-b, 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.

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 § 96.8, subsection 5.

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 § 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 § 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 states pursuant to § 602.10101.

The administrative law judge concludes that the claimant was not overpaid unemployment insurance benefits pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now been reversed.

DECISION:

The decision of the representative dated October 7, 2015, reference 04, is reversed. The claimant was not overpaid unemployment insurance benefits.

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Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/css