

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A CAPPS
Claimant

APPEAL NO. 08A-UI-09248-JTT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/03/08 R: 01
Claimant: Appellant (2)**

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the October 3, 2008, reference 04, decision that he was overpaid \$2,863.00 for seven weeks between August 3, 2008 and September 20, 2008. After due notice was issued, a hearing was held on October 28, 2008. Claimant participated. The administrative law judge took official notice of the Agency's administrative records of benefits disbursed to the claimant. A hearing in this matter was consolidated with the hearing an Appeal Number 08A-UI-09247-JTT and the administrative law judge hereby takes official notice of the decision entered in that matter.

The original decision in this matter contained errors in the Decision section that are corrected herein.

ISSUE:

Whether the claimant was overpaid \$2,863.00 for seven weeks between August 3, 2008 and September 20, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Capps established a claim for unemployment insurance benefits that was effective August 3, 2008. Mr. Capps received \$2,863.00 in benefits for the seven-week period of August 3, 2008 and September 20, 2008. The overpayment decision on appeal in this matter was prompted by a disqualification decision that has been reversed on appeal. See Appeal Number 08A-UI-09247-JTT.

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 states pursuant to section 602.10101.

Because the disqualification decision that prompted the overpayment decision in this matter has been reversed on appeal, the administrative law judge concludes that Mr. Capps was not overpaid \$2,863.00 for seven weeks between August 3, 2008 and September 20, 2008.

DECISION:

The Agency representative's October 3, 2008, reference 04 decision is reversed. The claimant was not overpaid \$2,863.00 for seven weeks between August 3, 2008 and September 20, 2008.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css/css