

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER C TEUFEL
Claimant

APPEAL NO. 13A-UI-05962-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/26/12
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated May 7, 2013, reference 05, that held she is overpaid benefits \$2,918.00 for the nine weeks ending October 20, 2012 due to an October 26, 2012 ALJ decision that disqualified him. A hearing was held on June 26, 2013. The claimant participated.

ISSUE:

The issue is whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record finds that: Claimant filed a UI claim effective August 26, 2012. The department issued a decision dated September 20, 2012 reference 01 that allowed claimant UI benefits by reason of his employment separation at ADM on August 29, and the employer appealed. An employer representative participated in department fact-finding.

An ALJ October 26 decision (#12A-UI-11779-LT) reversed the department September 20 decision and disqualified claimant with a remand order to determine the overpayment. Claimant received benefits totaling \$2,918.00 up to the disqualification. Claimant did not appeal the ALJ decision.

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 the claimant is overpaid benefits \$2,918.00 due to a ALJ decision that has become final when it was not appealed. The department issued a September 20 decision that was reversed by the ALJ October 26 decision that led to the overpayment.

Since the department record shows claimant received the benefits up to the ALJ decision disqualification, and the employer participated at fact-finding, there is no overpayment waiver.

DECISION:

The decision of the representative dated May 7, 2013, reference 05, is affirmed. The claimant is overpaid benefits \$2,918.00.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs