

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH L SHEPPARD
Claimant

APPEAL NO. 09A-UI-06102-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STATE UNIVERSITY
Employer

OC: 02/22/09
Claimant: Respondent (3-R)

Section 96.3(7) – Recovery of Overpayments
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Iowa State University (ISU) filed an appeal from a representative's decision dated March 26, 2009, reference 01, which held that no disqualification would be imposed regarding Kenneth Sheppard's separation from employment. After due notice was issued, a hearing was held by telephone on May 18, 2009. Mr. Sheppard participated personally. The employer participated by Marlene Burkheimer, Human Resources Specialist.

ISSUE:

The first issue is whether the employer filed a timely appeal. If the appeal is determined to be timely, the issue then becomes whether Mr. Sheppard has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The decision that is the subject of this appeal was mailed to the employer at its address of record on March 26, 2009. The employer received the decision and filed an appeal by fax on April 3, 2009. The appeal was faxed to the same number as the employer faxed its initial protest and not to the number listed on the decision of March 26. When it had not heard anything on the appeal, the employer re-faxed it on April 17, 2009.

Mr. Sheppard was employed by ISU as a strength coach and last performed services on December 16, 2008. He worked pursuant to a contract that expires on June 30, 2009. The employer will continue to pay him his contract wages until the expiration of the contract. Mr. Sheppard receives the gross amount of \$9,441.00 per month in wages. The employer will continue to provide all fringe benefits as if he was still actively performing services.

Mr. Sheppard filed a claim for job insurance benefits effective February 22, 2009. He has received a total of \$4,500.00 in benefits for the period from February 22 through May 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

The employer had ten days in which to file an appeal from the March 26, 2009 decision allowing benefits to Mr. Sheppard. Iowa Code section 96.6(2). The appeal was filed timely but faxed to an incorrect number at Workforce Development. Workforce Development routinely accepts appeals filed in its local offices. Therefore, the fact that the appeal was faxed to the incorrect department is not fatal to the appeal. For the above reason, the administrative law judge concludes that the employer filed a timely appeal on April 3, 2009.

The question of Mr. Sheppard's separation is not in issue as the employer acknowledges that his separation was not for any disqualifying reason. It was the employer's contention that he should not receive job insurance benefits while still receiving his full wages from ISU. The administrative law judge agrees. If his ISU wages converted to a weekly amount that was less than his weekly job insurance benefit amount of \$375.00 plus \$15.00, he would still be eligible to receive job insurance benefits. However, his ISU wages convert to a weekly amount substantially more than would allow him to also receive job insurance benefits.

Except for not actively performing services, Mr. Sheppard is, in essence, still an employee of ISU collecting full wages. The wages do not represent deferred compensation as Mr. Sheppard worked year round except for normal school breaks. Inasmuch as he is still receiving full-time wages, he is not eligible to receive job insurance benefits until such time as his wages cease. The job insurance benefits already received now constitute an overpayment and must be repaid. Although he may not have been at fault in creating the overpayment, the law still requires that it be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated March 26, 2009, reference 01, is hereby modified. Mr. Sheppard was separated from ISU for no disqualifying reason. He is ineligible to receive benefits from February 22 through June 27, 2009 as he is still receiving full pay from ISU. He has been overpaid \$4,500.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css