

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS P VANHORSEN
Claimant

APPEAL NO. 09A-EUCU-00503-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/21/08
Claimant: Appellant (1)

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Thomas Vanhorsen appealed a representative's decision dated November 24, 2009, reference 04, that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$1,031.00 for the five weeks between August 9, 2009 and September 12, 2009 because of a decision that disqualified the claimant for refusing work or recall to work with Rosenboom Machine & Tool, Inc. A telephone hearing was scheduled for and held on January 23, 2010, pursuant to due notice. The claimant participated personally. Participating as the claimant's personal representative was Daniel Vanhorsen, the claimant's father. Daniel Vanhorsen and Patricia Vanhorsen, the claimant's mother, participated also as witnesses.

ISSUE:

At issue in this matter is whether Thomas Vanhorsen has been overpaid job insurance benefits.

FINDINGS OF FACT:

The administrative law judge having considered all of the evidence in the record, finds: The overpayment issue in this case was created by a disqualification decision dated September 28, 2009, reference 03, which held the claimant not eligible to receive unemployment insurance benefits upon a finding that the claimant refused a recall to suitable work with Rosenboom Machine & Tool, Inc. The claimant, Thomas Vanhorsen disagreed with that fact-finder's decision and filed an appeal. After due notice, a telephone hearing was scheduled for and held on October 30, 2009. Although duly notified, the claimant did not participate personally. Participating as a witness and personal representative for Thomas Vanhorsen was his mother, Patricia Vanhorsen. The employer participated by the company's Human Resource Generalist Dena Nanniga.

On November 3, 2009, an administrative law judge issued a decision affirming the fact-finder's decision finding that the claimant refused a recall to suitable work affirming the disqualification from benefits until the claimant had worked in and earned wages for insured work equal to ten

times his weekly benefit amount, providing the claimant met all other eligibility requirements of Iowa law.

Subsequent to the initial September 28, 2009, reference 03, decision that disqualified Mr. Thomas Vanhorsen from benefits, a decision was issued by Iowa Workforce Development on November 24, 2009, reference 04, that held that the claimant had been overpaid job insurance benefits in the amount of \$1,031.00 for the period of time between August 9, 2009 and September 12, 2009, a period of time that the claimant had received unemployment insurance benefits that he had been later determined not to be eligible to receive.

The claimant filed an appeal from the November 24, 2009, reference 04, decision regarding being overpaid benefits in the amount of \$1,031.00. The claimant, however, did not exercise his right to disagree with the administrative law judge's decision dated November 3, 2009 that confirmed the fact-finder's decision in this matter. When an appeal was not filed from the administrative law judge's decision within the statutory time limit of 15 days per the instructions on the first page of the decision, the decision became final by operation of law.

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 unemployment insurance benefits in the amount of \$1,031.00 for the five weeks between August 9, 2009 and

September 12, 2009 pursuant to Iowa Code section 96.3-7, as the disqualification decision that created the overpayment decision had been affirmed by the administrative law judge on November 3, 2009. That decision became final by operation of law when it was not appealed to the Employment Appeal Board within the 15-day statutory time limit.

DECISION:

The decision of the representative dated November 24, 2009, reference 04, is affirmed. The claimant is overpaid unemployment insurance benefits in the amount of \$1,031.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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