

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENVER J AWTRY
Claimant

APPEAL 19A-UI-00322-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 10/08/17
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Denver Awtry (claimant) appealed an unemployment insurance decision dated December 24, 2018, reference 06, that concluded he was overpaid \$2,365.00 in unemployment insurance benefits for the benefit year that began on October 8, 2017. A telephone hearing was held on January 30, 2019. Proper notice of the hearing was given to the claimant. The claimant participated in the hearing. The Claimant's Exhibit A was admitted into the record. The administrative law judge took official notice of the administrative record including, but not limited to: the fact-finding documents, the administrative law judge's decisions for appeals 18A-UI-11290-JTT and 18A-UI-11291-JTT, and the Employment Appeal Board's (EAB) decisions in hearing numbers 19BUI-11290 and 19BUI-11291.

ISSUE:

Has the claimant been overpaid benefits?

FINDINGS OF FACT:

The claimant filed an original claim for unemployment insurance benefits with an effective date of October 8, 2017. He worked for Federal Express Corp. (FedEx) during his benefit year from February 2018 through April 27, 2018. The claimant reactivated his claim for benefits effective September 2, 2018 following his separation from Colfax Country Club (CCC). When reactivating his claim for benefits, the claimant notified Iowa Workforce Development (IWD) that CCC was his last employer, but was not asked about any other employers since filing his original claim for benefits. A notice of claim reactivation was not sent to FedEx during the October 8, 2017 claim year as IWD did not have knowledge the claimant had worked for that employer. On October 6, 2018, the claimant's claim year expired.

On October 7, 2018, the claimant filed a claim for benefits in a second benefit year. When he filed the subsequent claim, wages from FedEx were included in his new base period. FedEx received a notice of claim and a fact-finding interview was held to determine whether the claimant was eligible for benefits based on his April 27, 2018 separation. An unemployment insurance decision dated November 7, 2018, reference 02, determined the claimant was not

eligible for benefits due to the separation. The claimant appealed and the administrative law judge modified the decision with no change in effect, meaning the claimant was still disqualified from receiving benefits following the separation in April. The administrative law judge remanded the issue of whether the claimant had received benefits to which he was not entitled during the October 8, 2017 claim year due to the separation back to the Benefits Bureau of IWD.

The claimant appealed the administrative law judge's decision to the EAB who affirmed the decision. The claimant has filed a request for rehearing to the EAB but has not yet received a response. He has not filed a petition in District Court. The EAB's affirmance of the administrative law judge finding that the claimant is disqualified from receiving benefits after April 27, 2018 until he requalifies for benefits is final agency action at this time.

The claimant filed for and received a total of \$2,365.00 in unemployment insurance benefits for the five weeks between September 2, 2018 and October 6, 2018 during the October 8, 2017 claim year. As a result of the administrative law judge's remand, the Benefits Bureau issued an unemployment insurance decision dated December 24, 2018, reference 06, finding the claimant was overpaid benefits during the October 8, 2017 claim year due to the disqualifying separation from FedEx.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was overpaid unemployment insurance benefits which must be repaid.

Iowa Code § 96.3(7) provides, in pertinent part:

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.

The claimant has been disqualified from receiving unemployment insurance benefits based on his April 2018 separation from FedEx. The decision disqualifying him was affirmed by the EAB and is final agency action at this time. Therefore, the claimant is not entitled to benefits following the separation until he requalifies by earning ten times his weekly benefit amount in insured wages. There is no indication the claimant requalified for benefits prior to reactivating his claim effective September 2, 2018. The claimant received \$2,365.00 in unemployment insurance benefits during the October 8, 2017 claim year following the April 2018 separation. He has been overpaid these benefits which must be repaid.

DECISION:

The unemployment insurance decision dated December 24, 2018, reference 06, is affirmed. The claimant was overpaid \$2,365.00 in unemployment insurance benefits, which must be repaid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn