

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JACK L WHITCHELO**  
Claimant

**APPEAL 17A-UI-10536-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 08/06/17  
Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the October 6, 2017, (reference 02) decision that found the claimant overpaid unemployment insurance benefits due to a redetermination of his weekly benefit amount. After due notice was issued, a hearing was held by telephone conference call on November 16, 2017. Claimant participated and was represented by Dave Nagle, attorney at law.

**ISSUE:**

Has the claimant been overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's maximum weekly benefit amount was redetermined due to a decision issued in appeal number 17A-UI-09233-DG which removed wages from his base period. That decision is currently on appeal to the Employment Appeal Board. The claimant received weekly benefits in the gross amount of \$269.00 for the seven week period ending September 23, 2017. After his redetermination the agency concluded he should only have received the gross weekly amount of \$148.00. The claimant is thus overpaid unemployment insurance benefits in the amount of \$847.00.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.3(7)a-b, 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) (a) 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

(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 has been overpaid unemployment insurance benefits in the amount of \$847.00 pursuant to Iowa Code Section 96.3-7 as the claimant's weekly benefit amount was redetermined. That redetermination decision, while on appeal, remains in effect.

**DECISION:**

The October 6, 2017, (reference 02) decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$847.00.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/rvs