

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID M VANHORN
Claimant

APPEAL NO. 09A-UI-09705-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY
Employer

OC: 10/12/08
Claimant: Appellant (1)

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated July 9, 2009, reference 06, that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$65.00 as the result of a disqualification decision that the claimant failed to report or incorrectly reported holiday pay. A telephone hearing was scheduled for and held on July 22, 2009. The claimant participated personally.

ISSUE:

At issue in this matter is whether David VanHorn 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 the claimant's failure to correctly report holiday pay for the one week between December 28, 2008 and January 3, 2009.

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 \$65.00 pursuant to Iowa Code section 96.3-7. The amount of holiday pay was incorrectly reported by the claimant based upon information made available to Iowa Workforce Development by the employer and the law the adjudicator was correct in determining that an overpayment in benefits has resulted.

DECISION:

The decision of the representative dated July 9, 2009, reference 06, is affirmed. The claimant is overpaid unemployment insurance benefits in the amount of \$65.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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