

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN L UHLENHOPP
Claimant

APPEAL NO. 10A-EUCU-01244-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

Iowa Code § 96.3(7)b – Waiver of Overpayment

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 23, 2010 determination (reference 02) that held he had been overpaid \$2,702.00 in benefits he received September 20 through November 7, 2009. The overpayment occurred as the result of an administrative law judge's November 19, 2009 decision. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concluded the claimant has been overpaid \$2,702.00 and is not eligible for a waiver of the overpayment.

ISSUES:

Has the claimant been overpaid \$2,702.00 in benefits he received for the weeks ending September 26 through and November 7, 2009?

Is the claimant eligible for a waiver of any overpayment?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of December 21, 2008. He reopened this claim during the week of September 20, 2009. He filed claims for the weeks ending September 26 through November 7, 2009. He received \$2,527.00 in regular benefits for these weeks and an additional \$175.00, or \$25.00 each week, from the government's economic stimulus program.

The claimant and his former employer participated in a fact-finding interview. On October 15, 2009, a representative concluded the claimant was qualified to receive benefits. The claimant's former employer appealed the October 15, 2009 determination. After a hearing was held, an administrative law judge reversed the October 15 representative's determination and concluded the claimant was not qualified to receive benefits as of September 20, 2009. See decision for appeal 09A-UI-15596-MT. The claimant did not appeal the administrative law judge's decision.

REASONING AND CONCLUSIONS OF LAW:

The law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and

was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. Iowa Code § 96.3(7)b.

Based on the decision for appeal 09A-UI-15596-MT, the claimant is not legally entitled to receive benefits as of September 20, 2009. He has been overpaid a total of \$2,702.00 in benefits he received for the weeks ending September 26 through November 7, 2009.

The claimant is not at fault in receiving the overpayment. Since the employer participated at the fact-finding interview, the claimant is not eligible for a waiver of the overpayment. Therefore, the claimant is required to pay back \$2,702.00 to the Department.

DECISION:

The representative's December 23, 2010 determination (reference 02) is affirmed. The claimant has been overpaid \$2,702.00 in benefits he received for the weeks ending September 26 through November 7, 2009. Even though the claimant is not at fault in receiving the overpayment, he is not eligible for a waiver of the overpayment and is required to pay back this money to the Department.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw