

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Lucas State Office Building
Des Moines, Iowa 50319

Appeal Number: 06-IWDUI-151
OC: 01/27/02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MARC E MURRAY
MURRAY GROUP
1505 PLYMOUTH ROAD
MASON CITY IA 50401

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

IOWA WORKFORCE DEVELOPMENT
MARK HEINY FIELD AUDITOR
600 SOUTH PIERCE STE #1
MASON CITY IA 50401

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department . If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

DAN ANDERSON, IWD
KAREN PFAB, IWD

(Administrative Law Judge)

September 29, 2006
(Decision Dated & Mailed)

Section 96.12 – Purging Uncollectible Overpayments
Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated June 26, 2006, reference 02, which held that the claimant was overpaid unemployment benefits in the amount of \$3,815.00, because of a department decision dated June 23, 2006 that reduced his weekly or maximum benefit amount.

After due notice was issued, a hearing was held by telephone conference call on September 25,

2006. The claimant participated. Mark Heiny, Field Auditor of the Tax Bureau, participated for Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having examined all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits with an effective date of January 27, 2002. The claimant claimed for and received unemployment benefits of \$3,815 for twelve weeks during a period from January 27, 2002 to January 25, 2003.

The department issued a decision dated June 23, 2006 reference 01 that deleted the wages earned by the claimant in the calendar year 1999, and thereafter, as wages for insured work. When the Secretary of the State of Iowa dissolved the claimant's corporation (The Murray Group, Inc.) effective August 3, 1998, his previously reported taxable wages became personal compensation as a sole proprietor that are exempt from unemployment insurance. The department decision has now been affirmed (See Appeal #06-IWDUI-152). The department elected to revert to the claimant's unemployment claim effective January 27, 2002 to collect the overpaid benefits.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$3,815.00.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

If the division 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.

Iowa Code Section 96.12 provides: *Purging uncollectible overpayments.* Notwithstanding any other provision of this chapter, the department shall review all outstanding overpayments of benefit payments annually. The department may determine as uncollectible and purge from its records any remaining unpaid balances which are ten years or older from the date of the overpayment decision.

The administrative law judge concludes that the claimant is overpaid benefits \$3,815.00 for twelve-weeks during a period from January 27, 2002 and ending January 25, 2003 pursuant to Iowa Code Section 96.3-7. The overpayment is due to a department decision that has been affirmed (See Appeal #06-IWDUI-152). The Iowa Employment Security law gives the department discretion to revert up to ten years to collect an overpayment, such that the action taken in this matter is lawful.

DECISION:

The decision of the representative dated June 26, 2006, reference 02, is AFFIRMED. The claimant is overpaid benefits \$3,815.00.

rls