

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEROY J MULLEN
Claimant

APPEAL NO. 13A-UI-00011-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/18/11
Claimant: Appellant (2)**

Iowa Code Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

Leroy Mullen filed a timely appeal from the December 24, 2012, reference 06 decision that he was overpaid \$1,540.00 in benefits for the four-week period between April 29, 2012 and May 26, 2012. After due notice was issued, a hearing was held on February 4, 2013. Mr. Mullen participated. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-00010-JTT. Department Exhibits D-1 through D-4 and Exhibit A were received into evidence. The administrative law judge took official notice of the agency's administrative record (DBRO) of benefits disbursed to the claimant.

ISSUE:

Whether Mr. Mullen was overpaid \$1,540.00 in benefits for the four-week period between April 29, 2012 and May 26, 2012. He was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Leroy Mullen established a claim for unemployment insurance benefits that was effective September 18, 2011. Mr. Mullen received unemployment insurance benefits that included \$1,540.00 in benefits for the four-week period of April 29, 2012 through May 26, 2012. On June 1, 2012, an Iowa Workforce Development representative entered two decisions regarding whether Mr. Mullen was able to work and available for work. The representative entered a reference 03 decision that denied benefits effective April 29, 2012, based on a conclusion that Mr. Mullen was unable to work due to illness. The representative entered a second decision that allowed benefits effective June 3, 2012, based on a conclusion that Mr. Mullen was again able to work and available for work effective that date. Mr. Mullen did not file a timely appeal from the June 1, 2012, reference 03 decision that had the effect, when read in conjunction with the other decision entered the same day, of disqualifying Mr. Mullen for benefits for the period of April 29, 2012 through June 2, 2012. In the absence of a timely appeal, the June 1, 2012, reference 03 decision became a final agency decision.

On June 25, 2012, a Workforce Development representative entered a reference 05 decision. the decision stated that Mr. Mullen was eligible for benefits *effective April 29, 2012* provided he was otherwise eligible. The reference 05 decision specifically indicated that Mr. Mullen *medically* able to work. In other words, despite Mr. Mullen's failure to file a timely appeal from the June 1 2012, reference 03 decision that *denied* benefits effective April 29, 2012, the Workforce Development Claims Division entered a decision on June 25, 2012 that had the effect of amending the June 1, 2012, reference 03 decision to allow benefits effective April 29, 2012.

On December 24, 2012, Iowa Workforce Development mailed to Mr. Mullen a December 24, 2012, reference 06 decision that said Mr. Mullen was overpaid unemployment insurance benefits in the amount of \$1,540.00 for the four-week period between April 29, 2012 and May 26, 2012. The overpayment decision indicated on its face it had been prompted by a decision entered on June 1, 2012 that disqualified Mr. Mullen for benefits for not being able and available for work. The overpayment decision made no reference to the June 25, 2012, reference 05 decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 disqualification that the June 1, 2012, reference 03 decision imposed, the June 25, 2012, reference 05 decision removed. The effective date of each decision was April 29, 2012. In light of the June 25, 2012, reference 05 decision that allowed benefits effective April 29, 2012, based on a conclusion that Mr. Mullen was medical able to work and available for work, the administrative law judge concludes that the \$1,540.00 in benefits disbursed to Mr. Mullen for the period of April 29, 2012 through May 26, 2012 were not in fact an overpayment of benefits. Mr. Mullen shall not be required to repay the benefits he received for that period.

DECISION:

The Agency representative's December 24, 2012, reference 06, decision is reversed. The claimant was not overpaid benefits for the period of April 29, 2012 through May 26, 2012. The claimant shall not be required to repay the \$1,540.00 in benefits he received for that period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs