

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL R SAMPSON
Claimant

APPEAL NO: 10A-UI-09152-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/06/09
Appellant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayment of Benefit

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 14, 2010, reference 04, that held he was overpaid benefits \$2,793.00 for the seven weeks ending January 23, 2010 due to a department decision dated January 29, 2010 that disqualified him. The department decision has been affirmed by Administrative Law Judge (ALJ) and Appeal Board decisions. A hearing was held in Spencer, Iowa on September 15, 2010. The claimant participated. Claimant Exhibit A and Department Exhibit 1 were received as evidence.

ISSUE:

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant filed a claim for benefits effective December 6, 2009, and he began receiving unemployment benefits. The department issued a decision dated January 29, 2010 that disqualified him. The claimant appealed.

An ALJ issued a decision on March 18 that affirmed the department decision, and the claimant appealed to the Employment Appeal Board (EAB). The Board affirmed the department decision on April 23. The Board denied claimant's request for re-hearing on May 12. The Board denial decision states that it is final, but the claimant can petition the District Court for review. The claimant did not file a petition for District Court review.

A department representative reviewed claimant's benefit record, and determined he had been paid unemployment benefits totaling \$2,793.00 for a period of seven weeks prior to the department decision that disqualified him. The department issued a decision that the claimant was overpaid benefits \$2,793.00, and the claimant appealed.

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 the claimant is overpaid benefits \$2,793.00 for the seven-week period ending January 23, 2010.

Even though the claimant acted in good faith in claiming for and receiving the benefits, the department disqualification decision makes him ineligible, and the department is allowed to recover and collect the overpayment. There is no relief provided by the statute.

The EAB decision that denied claimant's request for a re-hearing became final when the claimant failed to file a Petition for Judicial Review in State District Court. This decision affirms the department decision that claimant is disqualified from receiving unemployment benefits retroactive to the effective date of his claim (December 9, 2009). The decision is the basis for the overpayment.

The department record shows the claimant was paid and did receive unemployment benefits totaling \$2,793.00 for the seven-week period from the effective date of his to the date of his disqualification, the week ending January 23, 2010.

DECISION:

The department decision dated June 14, 2010, reference 04, is affirmed. The claimant is overpaid benefits \$2,793.00.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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