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

ASHLEY R MELCHERT
Claimant

APPEAL NO. 13A-UI-02394-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
 DEVELOPMENT DEPARTMENT**

OC: 11/25/12
Claimant: Appellant (1)

Section 96.3-7 – Overpayment of Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated February 19, 2013, reference 03, which held that the claimant had been overpaid unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on March 26, 2013. The claimant participated personally. This hearing was held in conjunction with 13A-UI-02393-VST.

ISSUE:

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The claimant established an original claim for unemployment insurance benefits with an original claim date of November 25, 2012. The claimant received a total of $1,866.00 in unemployment insurance benefits for the ten weeks between November 25, 2012,and February 2, 2013. The claimant was disqualified from receiving benefits effective November 25, 2012, by a representative's decision dated February 15, 2013, reference 02. That decision was affirmed by the administrative law judge in 13A-UI-02393-VST.

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 claimant received a total of $1,866.00 in unemployment insurance benefits for the ten weeks between November 25, 2012, and February 2, 2013. The claimant has been disqualified from receiving benefits. Those benefits must now be repaid.

DECISION:

The unemployment insurance decision dated February 19, 2013, reference 03, is affirmed. The claimant has been overpaid unemployment insurance benefits in the sum of $1,866.00 Those benefits must now be repaid.

_____
Vicki L. Seeck
Administrative Law Judge

_____
Decision Dated and Mailed

vls/css