

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS L JOHNSTON
Claimant

APPEAL NO. 13A-UI-02809-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/20/13
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated March 8, 2013, reference 06, which held that the claimant was overpaid unemployment insurance benefits in the amount of \$7,429.00 for the 36 weeks between April 29, 2012, and February 9, 2013. After due notice was issued, a hearing was held by telephone conference call on April 4, 2013. The claimant participated personally. This case was heard in conjunction with 13A-UI-02808-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 January 22, 2012. That claim was reopened after the separation of employment with Iowa ProLube, which occurred on or about April 30, 2012. The claims division issued the reference 01 decision, which awarded benefits based on quitting a part-time job. The claimant did not respond correctly on his weekly call in that he had quit this job with Iowa ProLube. As a result of this mistake, weekly benefits were paid. Iowa ProLube was not notified of the filing of the unemployment claim by the claimant and did not have an opportunity to protest the charges.

The claimant established a new claim on January 20, 2013. Iowa ProLube was a base period employer and was notified of the filing for unemployment insurance benefits by the claimant. The employer protested and the correct decision, the reference 04, decision was issued. That decision has been affirmed by the administrative law judge in 13A-UI-02809-VST. Since the claimant has been disqualified, this disqualification goes back to the separation date of April 30, 2012. The claimant received unemployment insurance benefits in the amount of \$7,429.00 to which he was not entitled. The claimant has not earned ten times his weekly benefit and therefore the disqualification cannot be removed.

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 has been overpaid unemployment insurance benefits in the amount of \$7,429.00 for the 36-week period between April 29, 2012, and February 9, 2013. Those benefits must now be repaid.

DECISION:

The unemployment insurance decision dated March 8, 2013, reference 06, is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$7429.00. Those benefits must now be repaid.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs