

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD A BRANDT
Claimant

APPEAL NO. 10A-UI-16687-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/13/10
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Gerald A. Brandt filed a timely appeal from an unemployment insurance decision dated November 30, 2010, reference 02, that ruled he had been overpaid in the gross amount of \$1,274.00 for the 13 weeks ending September 11, 2010 because of an administrative law judge decision dated September 10, 2010 that had disqualified him for benefits. After due notice was issued, a telephone hearing was held December 29, 2010 with Mr. Brandt participating.

ISSUE:

Has the claimant been overpaid?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Gerald A. Brandt received unemployment insurance benefits in the gross amount of \$1,274.00 for the 13 weeks ending September 11, 2010. He has not appealed administrative law judge decision 10A-UI-10404-S2T dated September 10, 2010 that disqualified him for benefits. Mr. Brandt's former employer participated in the fact-finding interview.

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 statute set out above requires repayment of unemployment insurance benefits under some circumstances. Where an individual has been awarded benefits at fact finding but is disqualified upon appeal, the question becomes whether the claimant received the benefits in question, whether the administrative law judge's decision was later reversed and whether the claimant's former employer had participated in fact finding. The evidence in this record establishes that Mr. Brandt received the benefits in question, that he has not appealed the September 10, 2010 administrative law judge decision and that his former employer had participated in fact finding. Under these circumstances, the benefits must be repaid.

DECISION:

The unemployment insurance decision dated November 30, 2010, reference 02, is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,274.00 for the 13 weeks ending September 11, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs