

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 08-IWDUI-058
OC: 09/23/07
Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

THOMAS C FRITZSCHE
2815 E CENTRAL PARK AVENUE
DAENPORT IA 52803-2209

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

DAN ANDERSON, IWD

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department . If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

June 20, 2008

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayments

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated March 28, 2008, reference 03, which held that the claimant was overpaid unemployment benefits in the amount of \$1,754.00, because of a prorated pension that was not deducted from his unemployment benefits for a six-week period from October 28, 2007 through December 8, 2007, as stated in the department decision dated March 27, 2008.

After due notice was issued, a hearing was held by telephone conference call on June 9, 2008. The

claimant participated. Iowa Workforce Development, Investigation and Recovery, participated by Cindy Stroud, Investigator. Department Exhibits One and two were received as evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having examined all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits with an effective date of September 23, 2007. The claimant received an unemployment benefit of \$360 for the week ending December 8, 2008 (his weekly benefit amount).

The department issued a decision on December 20, 2007, reference 01 that the claimant's prorated IPERS pension is fully deductible from his unemployment benefit effective December 1, 2008. This decision was not appealed.

The department decision that caused the claimant to be overpaid benefits \$1,754 has been reversed and set aside. The issue of the claimant receiving retroactive benefits for the two-weeks ending October 13, 2007, has been remanded to the department for processing (See Appeal #08-IWDUI-057).

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid benefits \$1,754.00.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

If the division 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.

The administrative law judge concludes that the claimant is overpaid benefits \$360.00 for the week ending December 8, 2007 pursuant to Iowa Code Section 96.3-7. Since there was no appeal of the December 20, 2007 department decision, it is final as to the calculation of the amount and period to which the pension applies in this matter (December 1st, and thereafter). Since the department is processing the claimant's claims for the two-weeks ending October 13, 2007, it may offset one-week to repay the overpayment in this matter, and pay (\$360) the claimant for the additional week that he is owed.

DECISION:

The decision of the representative dated March 28, 2008, reference 03, is MODIFIED in favor of the

claimant. The claimant is overpaid benefits \$360.00.

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