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

MOSES ROSS
Claimant

APPEAL NO: 10A-UI-10100-BT

ADMINISTRATIVE LAW JUDGE
DECISION

IOWA WORKFORCE
  DEVELOPMENT DEPARTMENT

OC: 04/26/10
Claimant: Appellant (1)

Iowa Code § 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Moses Ross (claimant) appealed an unemployment insurance decision dated July 15, 2010, reference 02, which held that he was overpaid unemployment insurance benefits in the amount of $1,456.00 as a result of a disqualification decision. After a hearing notice was mailed to the party's last-known address of record, a telephone hearing was held on August 28, 2010. The claimant participated in the hearing. Based on the evidence, the arguments of the party and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was overpaid $1,456.00 in unemployment insurance benefits for the four-week period ending February 20, 2010.

FINDINGS OF FACT:

The administrative law judge, having heard and considered all of the evidence in the record, finds that: The overpayment issue in this case was created by a disqualification decision that has been affirmed. There is no record of the claimant appealing the decision to the Employment Appeal Board and the decision has become final. The claimant did receive benefits in the amount of $1,456.00.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 that the claimant has been overpaid unemployment insurance benefits in the amount of $1,456.00 pursuant to Iowa Code § 96.3-7 as the ineligibility decision that created the overpayment decision was affirmed and has become final.

DECISION:

The unemployment insurance decision dated July 15, 2010, reference 02, is affirmed. The claimant was overpaid unemployment insurance benefits in the amount of $1,456.00.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs