

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL PELTON**

Claimant

**APPEAL NO. 09A-UI-06101-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA STATE UNIVERSITY**

Employer

**OC: 01/25/09**

**Claimant: Respondent (3-R)**

Section 96.3(7) – Recovery of Overpayments

Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Iowa State University (ISU) filed an appeal from a representative's decision dated February 26, 2009, reference 01, which held that no disqualification would be imposed regarding Michael Pelton's separation from employment. After due notice was issued, a hearing was held by telephone on May 15, 2009. Mr. Pelton participated personally. The employer participated by Marlene Burkheimer, Human Resources Specialist.

**ISSUE:**

The first issue is whether the employer filed a timely appeal. If the appeal is determined to be timely, the issue then becomes whether Mr. Pelton has been overpaid job insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The decision that is the subject of this appeal was mailed to the employer at its address of record on February 26, 2009. The employer received the decision and filed an appeal by fax on March 3, 2009. The appeal was faxed to the same number as the employer faxed its initial protest and not to the number listed on the decision of February 26. When it had not heard anything on the appeal, the employer re-faxed it on April 17, 2009.

Mr. Pelton was employed by ISU as an assistant coach and last performed services on December 14, 2008. He worked pursuant to a contract that expires on June 30, 2009. The employer will continue to pay him his contract wages until the expiration of the contract. Mr. Pelton receives the gross amount of \$9,441.66 per month in wages. The employer will continue to provide all fringe benefits as if he was still actively performing services.

Mr. Pelton filed a claim for job insurance benefits effective January 25, 2009. He has received a total of \$5,415.00 in benefits for the period from January 25 through May 9, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

The employer had ten days in which to file an appeal from the February 26, 2009 decision allowing benefits to Mr. Pearson. Iowa Code section 96.6(2). The appeal was filed timely but faxed to an incorrect number at Workforce Development. Workforce Development routinely accepts appeals filed in its local offices. Therefore, the fact that the appeal was faxed to the incorrect department is not fatal to the appeal. For the above reason, the administrative law judge concludes that the employer filed a timely appeal on March 3, 2009.

The question of Mr. Pelton separation is not in issue as the employer acknowledges that his separation was not for any disqualifying reason. It was the employer's contention that he should not receive job insurance benefits while still receiving his full wages from ISU. The administrative law judge agrees. If his ISU wages converted to a weekly amount that was less than his weekly job insurance benefit amount of \$361.00 plus \$15.00, he would still be eligible to receive job insurance benefits. However, his ISU wages convert to a weekly amount substantially more than would allow him to also receive job insurance benefits.

Except for not actively performing services, Mr. Pelton is, in essence, still an employee of ISU collecting full wages. The wages do not represent deferred compensation as Mr. Pelton worked year round except for normal school breaks. Inasmuch as he is still receiving full-time wages, Mr. Pelton is not eligible to receive job insurance benefits until such time as his wages cease. The job insurance benefits already received now constitute an overpayment and must be repaid. Although he may not have been at fault in creating the overpayment, the law still requires that it be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated February 26, 2009, reference 01, is hereby modified. Mr. Pelton was separated from ISU for no disqualifying reason. He is ineligible to receive benefits from January 25 through June 27, 2009 as he is still receiving full pay from ISU. He has been overpaid \$5,415.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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