

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN M WHEAT
Claimant

APPEAL NO. 09A-UI-01815-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/02/08 R: 02
Claimant: Appellant (5)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Claimant appealed the February 3, 2009, reference 05, decision that concluded claimant was overpaid unemployment insurance benefits in the amount of \$28.64 as a result of a separation disqualification decision. A telephone hearing was held on February 27, 2009, pursuant to due notice. Claimant participated.

ISSUE:

The issue is whether claimant is overpaid benefits for the eight-week period ending December 27, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The overpayment issue in this case was created by a separation disqualification decision that has now been modified in favor of the appellant. The claimant did receive \$2,864.00 in benefits for the period in question, not \$28.64.

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 not been overpaid unemployment insurance benefits in the amount of \$28.64 as stated by the representative's decision. However, claimant is overpaid \$2,864.00 pursuant to Iowa Code § 96.3(7) because the decision that created the overpayment decision has been affirmed because the claimant's appeal from that decision was untimely.

DECISION:

The February 3, 2009, reference 05, decision is modified. Claimant has been overpaid unemployment insurance benefits in the amount of \$2,864.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css