

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN J CALHOON
Claimant

APPEAL NO. 11A-UI-05109-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/13/09
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayment
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Kevin Calhoon, through his designated representative, appealed a representative's decision dated March 11, 2011, reference 03, that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$6,380.00 for the 22 weeks between December 13, 2009 and May 15, 2010 because of a disqualification decision of an administrative law judge dated May 25, 2010. After due notice, a hearing was held in Council Bluffs, Iowa on May 26, 2011. Kevin Calhoon participated personally. Participating as a witness was his mother, Frieda Calhoon. Appearing as a witness and representative was the claimant's brother, Eric Calhoon.

ISSUE:

At issue in this matter is whether the claimant's appeal was timely and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

The administrative law judge having considered all of the evidence in the record, finds: A disqualification decision was mailed to the claimant's last-known address of record on March 11, 2011. The claimant's receipt of the decision was delayed due to factors beyond the claimant's control. The appeal was filed April 8, 2011. The claimant has established good cause for late filing.

The overpayment issue in this case was created by a disqualification decision of an administrative law judge dated May 25, 2010 finding that Mr. Calhoon left his previous employment under disqualifying conditions and found that Mr. Calhoon had received unemployment insurance benefits since filing his claim with an effective date of December 13, 2009. Because the administrative law judge's decision disqualified Mr. Calhoon from benefits from the time he left employment with Shelby County Cookers, the issue of whether Mr. Calhoon will be required to repay unemployment insurance benefits was remanded to the Claims Division of Iowa Workforce Development for determination of overpayment and whether

Mr. Calhoun was required to repay benefits. Agency records reflect that Mr. Calhoun claimed and received unemployment insurance benefits for the 22 weeks between December 13, 2009 and May 15, 2010. Mr. Calhoun was determined not eligible to receive benefits after the week ending May 15, 2010 as a disqualification imposed by the administrative law decision had been implemented at that time.

Kevin Calhoun, in response to questions, clearly articulated that during the weeks in question he had claimed unemployment insurance benefits and was aware that by a subsequent administrative law judge decision he was disqualified from receiving benefits and did not attempt to claim unemployment benefits after the benefit week ending May 22, 2010. During the time that Mr. Kevin Calhoun was claiming and receiving unemployment insurance benefits for the 22 weeks in question (see Exhibit 2) Mr. Calhoun was married and residing with his spouse. The claimant elected to have his weekly unemployment insurance benefits applied to a prepaid debit card. Mr. Calhoun further elected to give possession of the prepaid unemployment debit card to his spouse for the convenience of paying family monetary obligations. During this time it appears that although Mr. Kevin Calhoun was suffering from stress/psychological issues related to his previous employment, the claimant was cognizant of claiming benefits each week and had voluntarily elected to give the possession of his unemployment insurance debit card to his wife. Mr. Calhoun was also cognizant of the disqualification decision dated May 25, 2010 and its affect upon his claim.

After a period of time during which Mr. Calhoun had claimed benefits and benefits had been applied to his debit card each week, Mr. Calhoun's psychological condition worsened resulting in hospitalizations and the dissolution of the claimant's marriage.

It is the belief of the claimant's representatives that Mr. Kevin Calhoun's former wife may have collected unemployment insurance benefits unknown to the claimant and received the proceeds without Kevin Calhoun's authorization.

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.

In this matter Mr. Kevin Calhoon had left his employment with Shelby County Cookers and had initially been allowed unemployment insurance benefits without disqualification. The claimant's former employer filed an appeal and an administrative hearing was conducted. Based upon the facts in that hearing record, the administrative law judge concluded that Mr. Calhoon had left employment voluntarily without good cause attributable to the employer for quitting. Unemployment insurance benefits were denied from the time that he filed his claim until such time as Mr. Calhoon worked in and was paid wages for insured work that equaled ten times his weekly benefit amount and was otherwise eligible. The administrative law judge also determined that Mr. Calhoon had received unemployment insurance benefits to which he was not entitled.

During the hearing in this matter Mr. Calhoon testified with apparent competency that he had claimed benefits through the period of December 13, 2009 and May 15, 2010 and was aware that the unemployment insurance funds claimed each week were being utilized by his spouse via an unemployment insurance debit card that had been provided to Kevin Calhoon by Workforce Development for the purpose of paying the claimant his weekly benefits.

The administrative law judge concludes based upon a careful review of the evidence in the record that Mr. Calhoon was aware that claiming benefits during the weeks in question and that the funds being transmitted to the claimant's account via an unemployment debit card were being utilized for family purposes by his spouse. Mr. Calhoon did not elect to change the method of payment nor restrict the access of his spouse to the use of his unemployment insurance funds via the debit card. Mr. Calhoon did not appeal the administrative law judge decision disqualifying him from benefits and that decision became final by operation of law.

Although sincerely sympathetic to Mr. Calhoon's situation, the administrative law judge must conclude based upon the evidence in the record, that the unemployment insurance benefits were claimed and received by Mr. Kevin Calhoon or his designated representative for the 22 weeks in question between December 13, 2009 and May 15, 2010. The Iowa Employment Security Law does not provide for or contemplate a forgiveness clause which would allow the administrative law judge to forgive the overpayment issue to Mr. Calhoon. Mr. Calhoon was overpaid unemployment insurance benefits in the amount of \$6,380.00 pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision was not appealed by the claimant and became final by operation of law.

DECISION:

The decision of the representative dated March 11, 2011, reference 03, is affirmed. The claimant is overpaid unemployment insurance benefits in the amount of \$6,380.00 for the 22 weeks between December 13, 2009 and May 15, 2010.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css