

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES F SITKIEWICZ
Claimant

APPEAL NO: 07A-UI-02171-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT
TAX SECTION**

**OC: 12/10/06 R: 12
Claimant: Appellant (2R)**

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.4(4) – Monetary Eligibility and Subsequent Benefit Year
Iowa Code § 96.3(4) – Determination of Benefits

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 21, 2007, reference 02, decision that denied benefits and found the claimant overpaid. After due notice was issued, a telephone conference hearing was held on March 20, 2007. Claimant participated.

ISSUE:

The issue is whether claimant is monetarily eligible for benefits and if he was overpaid benefits.

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 after Iowa Workforce Development (IWD) removed wages from claimant's account according to a February 19, 2007 redetermination of benefits (which the Agency did not associate with the overpayment record or offer at hearing) and because of that found him overpaid benefits since he was then considered no longer eligible for benefits. The wages were apparently removed because claimant changed his family name from Arbuthnot to Sitkiewicz on August 10, 2006 and some employers may not have recognized the new name when notified of the claim for benefits. (Claimant's Exhibit A) However, the Social Security number did not change and Iowa Workforce Development did not investigate further or contact claimant about the issue before the wages were removed.

Other wages have not been recorded in claimant's wage record and proof of those earnings are included in Claimant's Exhibit A.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did have sufficient wages in the base period for benefit eligibility.

Iowa Code § 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

Iowa Code § 96.3-4 provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage.
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's

nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

Since the wages in the February 19, 2007 monetary redetermination were removed in error, those wages must be restored. The employers in each case shall be notified of the claim identifying claimant with his current name as well as by the name used at the time of employment and shall have the opportunity to protest payment of benefits.

The administrative law judge concludes claimant has not been overpaid benefits.

Iowa Code § 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 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.

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.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits in the amount of \$1,517.00 pursuant to Iowa Code § 96.3(7), as the February 19, 2007 redetermination of wages that created the overpayment decision has now been reversed.

DECISION:

The February 19, 2007 monetary redetermination is reversed as is the February 21, 2007, reference 02 decision. The wages shall be reinstated and claimant has not been overpaid unemployment insurance benefits in the amount of \$1,517.00.

REMAND: The unrecorded wage issue delineated in the findings of fact is remanded to the tax section of Iowa Workforce Development for addition of the wages according to the evidence contained in Claimant's Exhibit A.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css