

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ERIK D BARNHILL
5910 DEAN RD SW APT #6
CEDAR RAPIDS IA 52404

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 05A-UI-04305-RT
OC: 11-28-04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant, Erik D. Barnhill, filed a timely appeal from an unemployment insurance decision dated April 8, 2005, reference 07, determining that he was overpaid unemployment insurance benefits. After due notice was issued for a related appeal, 05A-UI-03307-RT, a telephone hearing was held on April 25, 2005, with the claimant participating. This appeal was consolidated with that appeal, 05A-UI-03307-RT, for the purposes of the hearing with the consent of the parties. Although there was no employer or respondent noticed in this appeal, the employer in the appeal with which this was consolidated, Nature Care Company, doing business as Quality Care, participated in the hearing by Beth Van Der Schel, Human Resources Administrator, and Caroline Sutliff, Director of Operations. Although there was no notice of

hearing sent out for this appeal, the parties permitted the administrative law judge to take evidence on and decide the issue of this appeal, whether the claimant is overpaid unemployment insurance benefits under Iowa Code section 96.3-7, and consented that this appeal be consolidated with the other appeal for the purposes of the hearing. Employer's Exhibits One through Six were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's One through Six, the administrative law judge finds: The claimant filed for unemployment insurance benefits effective November 28, 2004 and among other benefits, the claimant received unemployment insurance benefits in the amount of \$1,458.00 from benefit week ending February 5, 2005 to benefit week ending March 12, 2005. This amount is now shown as overpaid and is the subject of this appeal. The claimant is shown as being disqualified to receive unemployment insurance benefits from and after benefit week ending March 19, 2005. The claimant received benefits prior to benefit week ending February 5, 2005 but they are not at issue here. In a decision in appeal number 05A-UI-03307-RT, the administrative law judge concluded that the claimant was not entitled to receive these unemployment insurance benefits from benefit week ending February 5, 2005, to benefit week ending March 12, 2005 because his separation from the employer, Nature Care Company, doing business as Quality Care, on or about February 4, 2005, was disqualifying.

REASONING AND CONCLUSIONS OF LAW:

The question presented in this appeal is whether the claimant is overpaid unemployment insurance benefits in the amount of \$1,458.00 for six weeks between January 30, 2005 and March 12, 2005. The administrative law judge concludes that the claimant is overpaid that amount for that period.

Iowa Code section 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 received unemployment insurance benefits in the amount of \$1,458.00 since separating from the employer herein on or about February 4, 2005. In appeal number 05A-UI-03307-RT, the administrative law judge concluded the claimant was not entitled to receive such benefits because his separation from his employer, Nature Care Company, doing business as Quality Care, was disqualifying.

Accordingly, the administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,458.00 to which he is not entitled and he is, therefore, overpaid such benefits. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 8, 2005, reference 07, is affirmed. The claimant, Erik D. Barnhill, is overpaid unemployment insurance benefits in the amount of \$1,458.00 for six weeks between January 30, 2005 and March 12, 2005.

pjs/pjs