

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GERALD N VENES**

Claimant

**APPEAL NO. 10A-UI-05395-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**

Employer

**OC: 02/28/10**

**Claimant: Appellant (1)**

Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The claimant, Gerald Venes, filed an appeal from a decision dated March 30, 2010, reference 05. The decision found he could not use wages from the United State Military to requalify for unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 6, 2010. The claimant participated on his own behalf. The employer, Kelly Services, participated by Staffing Supervisor Nitza Colapret. Exhibit D-1 admitted into the record.

**ISSUE:**

The issue is whether wages from the United States Military may be used to requalify for unemployment benefits.

**FINDINGS OF FACT:**

Gerald Venes was disqualified as a result of his separation from Kelly Services. He was originally determined to have requalified by earning ten times his weekly benefit amount with the United States Military. These wages were later determined not to qualify under 5 U.S.C. 8521 (a)(1)(B)(ii)(IV) because he did not complete the first full term of his service. He is therefore overpaid unemployment benefits as he did not requalify after his disqualifying separation from Kelly Services.

**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.

The claimant did not requalify for benefits and is therefore not entitled to benefits after his separation from Kelly Services.

**DECISION:**

The decision of the representative dated March 30, 2010, reference 05, is affirmed. The claimant has not requalified for unemployment benefits since his separation from Kelly Services.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs