

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH W ELLIOTT**  
Claimant

**APPEAL NO. 08A-UI-09033-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/27/08 R: 03  
Claimant: Appellant (2)**

Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the September 29, 2008, reference 02, decision that he was overpaid \$2,093.00 for seven weeks between July 27, 2008 and September 13, 2008. After due notice was issued, a hearing was held on October 22, 2008. Claimant failed to respond to the hearing notice instructions to provide a telephone number for the caring and did not participate. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The hearing in this matter was consolidated with the hearing an Appeal Number 08A-UI-08032-JTT and the administrative law judge hereby takes official notice of the decision entered in that matter.

**ISSUE:**

Whether the claimant was overpaid \$2,093.00 for seven weeks between July 27, 2008 and September 13, 2008.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Joseph Elliott established a claim for unemployment insurance benefits that was effective July 27, 2008. Mr. Elliott received \$2,093.00 in benefits for seven weeks between July 27, 2008 and September 13, 2008.

The disqualification decision that prompted the overpayment decision in this matter has been reversed on appeal. See Appeal Number 08A-UI-09032-JTT.

**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.

Because the disqualification decision that prompted the overpayment decision in this matter has been reversed on appeal, the administrative law judge concludes that the claimant was not overpaid \$2,093.00 for seven weeks between July 27, 2008 and September 13, 2008.

The administrative law judge has remanded Appeal Number 08A-UI-09032-JTT for determination of the claimant's ability to work and availability for work. The outcome of that determination could result in a new overpayment decision concerning the same period at issue herein.

**DECISION:**

The Agency representative's September 29, 2008, reference 02, decision is reversed. The claimant was not overpaid \$2,093.00 for seven weeks between July 27, 2008 and September 13, 2008.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs