

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN L GILMORE
Claimant

APPEAL NO. 09A-UI-18751-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Original Claim: 08/09/09
Claimant: Appellant (1)**

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated December 8, 2009, reference 02, that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$2,793.00 for the seven weeks between August 9, 2009, and September 26, 2009, because of a disqualification decision by an administrative law judge dated October 16, 2009. A telephone hearing was scheduled for and held on January 23, 2010, pursuant to due notice. Participating on behalf of the claimant was his attorney, Mr. Joe Martin.

ISSUE:

The issue in this matter is whether John Gilmore has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: The overpayment issue in this case was created by a disqualification decision of an administrative law judge dated October 16, 2009, which reversed a fact-finder's decision dated September 3, 2009, which had allowed benefits. Mr. Gilmore appealed the administrative law judge's decision to the Employment Appeal Board, and a decision affirming the disqualification decision entered by the administrative law judge has been entered by the Employment Appeal Board.

It is the claimant's position that he should not be required to repay the overpayment, as there was not sufficient participation by the employer in the fact-finding conference that took place prior to the issuance of the fact-finder's decision in this matter. The fact-finder submitted documentary evidence for the fact-finder's consideration but did not participate personally.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is liable to repay the overpayment of \$2,793.00 for the seven weeks between August 9, 2009, and September 26, 2009.

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.

Under Section 96.6-2, the claimant has the burden of proving that the claimant meets the basic eligibility conditions of Section 96.4, and the employer has the burden of proving that the claimant is disqualified for benefits pursuant to Section 96.5 on the basis of the facts found by the representative providing notice to the parties. This information is received by the representative within ten days from the date of the mailing of the notice of the filing of the claim.

The administrative file in this matter shows that the employer did participate in the initial determination by providing documentary evidence in support of its position that Mr. Gilmore should be disqualified from benefits. The administrative law judge concludes that the fact that the employer did not participate personally in the fact-finding interview but instead elected to submit documentary evidence is not determinative. Mr. Gilmore should not be required to repay the unemployment insurance benefits in question. The employer provided information relevant to the issue at hand, stating the basis for the company's decision to discharge Mr. Gilmore from his employment. The fact that Mr. Gilmore participated in the fact-finding interview in a more direct way does not make the employer's participation by documentary evidence null and void because the employer did not participate in the same manner or level as the claimant.

Based upon a review of the administrative file in this matter, the administrative law judge concludes that the employer did participate in the initial determination, providing disqualifying information on the individual's separation from employment. The administrative law judge thus

concludes that the overpayment of benefits shall be recovered from Mr. Gilmore either by having the sum equal to the overpayment deducted from any future benefits payable or by having Mr. Gilmore pay the department a sum equal to the overpayment.

DECISION:

The representative's decision dated December 8, 2009, reference 02, is affirmed. The claimant is overpaid unemployment insurance benefits in the amount of \$2,793.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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