

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRAULIO TRUJILLO**  
Claimant

**APPEAL NO. 10A-UI-13239-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 07/26/09**  
**Claimant: Appellant (2)**

Section 96.3-7 – Recovery of Overpayment  
Section 96.6-2 – Final Decision

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated September 14, 2010 reference 08, that held claimant was overpaid benefits \$5,172.83 for a 28-week period ending March 13, 2010 due to a department decision (August 27, 2009). A telephone hearing was held on November 8, 2010. The claimant, his Interpreter, Steven Rhodes, and Attorney, Michele Van Wyhe, participated. Holly Carter, Unemployment Specialist, participated for the employer.

**ISSUE:**

Whether claimant is overpaid benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds that: The claimant and employer agreed that claimant did not work for the employer after August 5, 2009. The department decision became final when no appeal was filed by the September 7, 2009 deadline date. The claimant did not appeal this decision, as it was favorable to him.

The claimant received \$5,172.83 benefits based on a favorable department decision.

**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.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The administrative law judge concludes claimant is not overpaid benefits \$5,172.83

The department overpayment decision is based on an August 27, 2009 decision that became final on September 7. The department employment separation decision is favorable to the claimant and he filed no appeal. The department is bound by that decision as it did not appeal.

**DECISION:**

The decision of the representative dated September 14, 2010, reference 08, is reversed. The claimant is not overpaid benefits \$5,172.83.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs