

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RALPHEL L SEARCY
Claimant

APPEAL NO. 15A-UI-12977-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/21/15
Claimant: Appellant (4)**

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated November 23, 2015, reference 09, that concluded claimant was overpaid unemployment insurance as a result of a disqualification decision. A hearing was scheduled and held on December 14, 2015 pursuant to due notice. Claimant did participate.

ISSUE:

Whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The overpayment issue in this case was created by a ruling claimant was improperly paid unemployment benefits. Claimant was deemed to have been overpaid \$1090.00 for the five weeks ending November 14, 2015.

The claimant currently works for LA Leasing, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant was hired to work part time for employer after having additional secured through other employment in his benefit year. While claimant has had hours reduced at times – leading to his partial unemployment status, claimant has also not been able and available for work that was available for him at other times.

Claimant was not able and available for work during the weeks ending on November 7, 2015 through November 14, 2015. Claimant had personal and automotive problems during this time period which kept him from being able to work when work was available for him. In the weeks prior to this time period, claimant was able and available for work, but was offered fewer hours than he had consistently been receiving prior to those weeks. During the weeks ending October 17, 2015 through October 31, 2015 claimant was able and available for work. Ongoing work continues to be available for claimant at this time, and claimant is currently working for employer.

Claimant received benefits in the amount of \$484.00 during the weeks ending in October 17, 2015 through October 31, 2015. During the weeks ending November 7, 2015 through November 14, 2015 claimant received \$606.00 in benefits. As claimant was not able and available during the weeks ending November 7, 2015 through November 14, 2015 amounts received during those weeks shall be deemed overpayments.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.3(7)a-b, 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.

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 § 96.8, subsection 5.

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 § 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 § 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 states pursuant to § 602.10101.

The administrative law judge concludes that claimant was overpaid unemployment insurance benefits in the amount of \$606.00 for the 2 weeks ending November 14, 2015, pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now been modified.

DECISION:

The decision of the representative dated November 23, 2015, reference 09, is modified. Claimant was overpaid unemployment insurance benefits in the amount of \$606.00.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css