

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONY L IRVIN
Claimant

APPEAL NO. 09A-UCFE-00004-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES POSTAL SERVICE
Employer

OC: 12/02/07
Claimant: Appellant (1)

Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Tony Irvin (claimant) appealed a representative's March 12, 2009 decision (reference 08) that concluded he was overpaid unemployment insurance benefits for the 23 weeks from January 13, 2008 to June 21, 2008, due to the receipt of back pay from United States Postal Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 22, 2009. The claimant participated personally. The employer participated by Angie Pettinger, Labor Relations Specialist.

ISSUE:

The issue is whether claimant received vacation pay at separation, if that amount is deductible from benefits, and if so, for what period.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was separated on November 27, 2007. He later received back pay from the employer. The employer calculated the amount of back pay, notified Iowa Workforce Development and the claimant. The employer withheld the proper amount of \$8,891.00 to reimburse the State of Iowa for the claimant's overpayment of unemployment insurance benefits. The employer issued the claimant a check for the remainder. The claimant negotiated the check. The claimant wanted to pay the State of Iowa himself for the overpayment of unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was overpaid unemployment insurance benefits due to the receipt of back pay from the employer.

Iowa Code § 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 employer paid the claimant back pay, causing the claimant to be overpaid unemployment insurance benefits in an amount of \$8,891.00.

DECISION:

The March 12, 2009, reference 08, decision is affirmed. The back pay was deducted for the correct period and the claimant was overpaid \$8,891.00. This amount has been paid through a deduction from the claimant's back pay award.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css