

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

TOM E GATES

Claimant,

and

IOWA WORKFORCE DEVELOPMENT

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HEARING NUMBER: 07B-UI-08910

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

Following a hearing on the issue of work stoppage the Administrative Law Judge issued a modification of the claims representative decision. Because of the disposition of that issue the Administrative Law Judge held a hearing on the issue of overpayment. After the hearing on the overpayment the matter was remanded for a determination of whether the Claimant was disqualified based on the nature of the separation with the Claimant's employer. The Administrative Law Judge, in the same decision that remanded the separation issue, also assessed an overpayment based on the receipt of benefits following the separation. The Claimant appeals the overpayment on the basis that no overpayment is owed until it is determined that the separation was disqualifying.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2007) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Here it seems that the Administrative Law Judge contemplated that following disposition of the separation issue the overpayment question could be redetermined if necessary. 871 IAC 24.19(3) (“Upon receiving a written request for review or, on its own initiative and on the basis of the facts as it may have in its possession or may acquire, the claims section may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge.”). This is, however, only implied in the decision. Out of an abundance of caution the Claimant appealed in order to assure that the overpayment decision would not become a prior adjudication and binding even if the Claimant is ultimately not disqualified. In this same spirit the Board now remands the overpayment decision in this matter. It is understood that the overpayment decision will be redetermined, possibly reduced or eliminated altogether, if the merits of the separation issue are dealt with in a fashion that justifies such redetermination. We further order that the instant overpayment decision will not be treated as a prior adjudication requiring the assessment of an overpayment if the issue of separation is resolved in a manner that is inconsistent with the assessment of an overpayment.

DECISION:

The decision of the administrative law judge dated October 12, 2007 is not vacated at this time. If following the determination of the separation issue an assessment of an overpayment, or the current amount of the overpayment, is no longer justified then the overpayment assessed in the instant matter will be vacated. In such event a new overpayment determination may be made assessing a different amount, if appropriate. This matter is remanded to the appropriate division of Iowa Workforce Development so that the overpayment issue may be considered following the disposition of the separation issue.

Elizabeth L. Seiser

Mary Ann Spicer

John A. Peno

RRA/fnv