

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
<b>THOMAS W MILLER</b> Claimant	<b>APPEAL NO. 09A-UI-08160-S2T</b>
<b>SCHRADER EXCAVATING &amp; GRADING</b> Employer	<b>ADMINISTRATIVE LAW JUDGE DECISION</b>
	<b>OC: 02/01/09</b> <b>Claimant: Appellant (2)</b>

Iowa Code section 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The claimant appealed from the June 1, 2009, reference 02, decision that concluded the claimant was overpaid unemployment insurance benefits as a result of a failure to report or incorrectly reporting severance pay from Schrader Excavating & Grading (employer). A telephone hearing was scheduled and held on June 23, 2009, pursuant to due notice. The claimant did participate personally. The employer participated by Kristin Wolter, Secretary.

**ISSUE:**

The issue is whether the claimant was overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: For the week ending February 7, 2009, the claimant earned \$143.00 in gross wages. For the week ending February 14, 2009, the claimant earned \$238.00 in gross wages. The employer incorrectly reported the wages as severance pay. The claimant correctly reported his wages.

**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.

The administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits pursuant to Iowa Code section 96.3(7) as the claimant did correctly report wages for the two-week period ending February 14, 2009. The representative's decision calculation is incorrect because the wages were not severance pay.

**DECISION:**

The June 1, 2009 reference 02, decision is reversed. The claimant was not overpaid unemployment insurance benefits.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css