

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY ROUT
Claimant

APPEAL NO. 09A-UI-18142-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/16/09
Claimant: Appellant (4-R)

Iowa Code Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

Kimberly Rout filed a timely appeal from the November 30, 2009, reference 03, decision that concluded she had been overpaid unemployment insurance benefits in the amount of \$17,626.00 for 36 weeks between February 28, 2009 and October 29, 2009 as a result of a disqualification decision entered by an administrative law judge on November 3, 2009. After due notice was issued, a hearing was held on February 22, 2009. Ms. Route participated personally and was represented by Attorney Mark King. Exhibits A and B were received into evidence during the hearing, as were Department Exhibits D-1 through D-10. The administrative law judge left the hearing record open for the limited purpose of allowing the claimant to submit additional documents. The claimant submitted additional documents on February 22, 2009, and those documents were received into the record as Exhibit C.

ISSUE:

Whether Ms. Rout has been overpaid unemployment insurance benefits in the amount of \$17,626.00.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kimberly Rout established a claim for benefits that was effective August 17, 2008. In connection with that claim, Ms. Rout received \$3,610.00 in regular unemployment insurance benefits for the period of August 17, 2008 through November 1, 2008. In connection with this same claim, Ms. Rout received \$5,776.00 in regular unemployment insurance benefits for the period of November 2, 2008 through February 21, 2009. On the same claim, Ms. Rout received extended unemployment compensation (EUC) benefits of \$7,220.00 for the period of February 22, 2009 through July 11, 2009. On the same claim, Ms. Rout received \$500.00 in federal stimulus benefits for the period of February 22, 2009 through July 11, 2009. Ms. Rout's eligibility for the \$25.00 federal stimulus benefit was contingent upon her being eligible for regular or extended benefits.

Ms. Rout established a new original claim for benefits that was effective August 16, 2009. In connection with that claim, Ms. Rout received \$3,880.00 in regular unemployment insurance benefits for the period of August 16, 2009 through October 24, 2009. In connection with the same claim, Ms. Rout received \$250.00 in federal stimulus benefits for the same period. Ms. Rout's eligibility for the \$25.00 federal stimulus benefit was contingent upon her being eligible for the regular benefits.

On September 9, 2008, a Workforce Development representative entered a reference 01 decision that allowed benefits, provided Ms. Rout was otherwise eligible, in connection with a July 31, 2008 discharge from Electrolux Home Products, Inc./Frigidaire. This decision was entered in connection with the August 17, 2008 original claim date. The employer had not participated in the September 8, 2008 fact-finding interview that led to the September 9, 2008, reference 01, decision. Ms. Rout did participate. There is no indication that Ms. Rout engaged in fraud or willful misrepresentation during the September 8, 2008 fact-finding interview.

The employer appealed the reference 01 decision that allowed benefits. On October 2, 2009, Administrative Law Judge Debra Wise held an appeal hearing in Appeal Number 08A-UI-08350-DWT. Both parties participated. On October 3, 2008, Judge Wise entered her decision. Judge Wise concluded that the employer discharged or suspended Ms. Rout on July 31, 2008 for no disqualifying reason. Judge Wise ruled that Ms. Rout was eligible for benefits effective August 17, 2008, provided she was otherwise eligible. This rule was based only on the separation. Judge Wise remanded the matter to the Claims Division for determination of whether Ms. Rout was on a leave of absence and whether she was able to work and available for work. See Appeal Number 08A-UI-08350-DWT. The employer did not appeal Judge Wise's decision to the Employment Appeal Board and the decision that allowed benefits in connection with the separation, provided Ms. Rout was otherwise eligible, became a final agency decision.

Ms. Rout did not perform any additional work for Electrolux Home Products, Inc./Frigidaire after July 14, 2008. Ms. Rout subsequently received long-term disability benefits from the employer.

On September 14, 2009, a Workforce Development representative entered a reference 02 decision that allowed benefits in connection with a May 14, 2009 non-disqualifying discharge from the employment, provided Ms. Rout was otherwise eligible. The decision was entered in connection with the new original claim for unemployment insurance benefits that Ms. Rout had established on August 16, 2009. The employer did not participate in the September 11, 2009 fact-finding interview that led to the September 14, 2009, reference 02 decision. Ms. Rout did participate. There is no indication that Ms. Rout engaged in fraud or willful misrepresentation during the September 11, 2009 fact-finding interview.

The employer appealed the September 14, 2009, reference 02, decision that allowed benefits in connection with a May 14, 2009 discharge. On October 19, 2009, Administrative Law Judge Debra Wise held a hearing in Appeal Number 09A-UI-14254-DWT. Both parties participated.

On November 3, 2009, Judge Wise entered a decision. Despite Judge Wise's ruling in Appeal Number 08A-UI-08350-DWT that the employer had discharged or suspended Ms. Rout on July 31, 2008 for no disqualifying reason, Judge Wise found in Appeal Number 09A-UI-14254-DWT that Ms. Rout had gone on a medical leave of absence effective July 14, 2008. Judge Wise reversed the September 14, 2009, reference 02, decision and ruled that Ms. Rout had voluntarily quit her employment without good cause attributable to the employer after her physician released her to return to work on October 31, 2008. Judge Wise disqualified Ms. Rout for unemployment insurance benefits, *effective November 2, 2008*, and

continued the disqualification until Ms. Rout had worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she was otherwise eligible. Judge Wise remanded the overpayment issue to the Claims Division. Judge Wise also noted that the Claims Division had not entered a decision regarding Ms. Rout's ability to work or availability for work despite Judge Wise's remand on those issues in Appeal Number 08A-UI-08350-DWT. See Appeal Number 09A-UI-14254-DWT.

On November 23, 2009, Ms. Rout appealed the administrative law judge decision in Appeal Number 09A-UI-14254-DWT to the Employment Appeal Board. The Employment Appeal Board found the appeal untimely, concluded it lacked jurisdiction, and ruled that Judge Wise's November 3, 2009 decision in Appeal Number 09A-UI-14254-DWT decision denying benefits effective November 2, 2009 was a final agency decision. See Hearing Number 09B-UI-14254.

Ms. Rout has filed a Petition for Judicial Review in connection with the Employment Appeal Board's decision in Hearing Number 09B-UI-14254. That matter is pending.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3(7) provides, in relevant part, as follows:

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.

[Emphasis added.] Subsection b became law effective July 1, 2008.

Because Administrative Law Judge Debra Wise's decision in Appeal Number 09A-UI-14254-DWT has become a final agency decision, the administrative law judge concludes that Ms. Rout has indeed been overpaid benefits totaling \$17,626.00. However, the period involved in the overpayment is *November 2, 2008* through October 24, 2009, not *February 28, 2009* through October 24, 2009.

Iowa Code section 96.3(7)(b) was the established law of Iowa at the time of the September 8, 2008 fact-finding interview that led to the September 9, 2008, reference 01, decision that allowed benefits effective August 17, 2008, provided Ms. Rout was otherwise eligible. The

employer did not participate in the September 11, 2009 fact-finding interview. Ms. Rout did participate. There is no indication that Ms. Rout engaged in fraud or willful misrepresentation during the September 11, 2009 fact-finding interview.

Subsection b was enacted into law effective July 1, 2008. Iowa Code section 96.3(7)(b) was the established law of Iowa at the time of the September 11, 2009 fact-finding interview that led to the September 14, 2009, reference 02, decision that allowed benefits, effective August 16, 2009, provided Ms. Rout was otherwise eligible. The employer did not participate in the September 11, 2009 fact-finding interview. Ms. Rout did participate. There is no indication that Ms. Rout engaged in fraud or willful misrepresentation during the September 11, 2009 fact-finding interview.

Under Iowa Code section 96.3(7)(b)(1), the administrative law judge concludes that Ms. Rout is not subject to recovery of the \$17,626.00 overpayment in connection with any of the above decisions that address her *separation(s)* from the employment.

Unfortunately, that is not the end of the story. This matter must be remanded to the Claims Division so that decisions may *finally* be entered regarding whether Ms. Rout met the work *ability* and *work availability* requirements of Iowa Code section 96.4(3) *for the entire period of August 17, 2008 through October 24, 2009*. In addition, the matter must be remanded for determination of whether Ms. Rout met the minimum earnings requirements of Iowa Code section 96.4(4) in connection with the claim for the second claim year that was effective August 16, 2009. New overpayment decisions may well result from decisions entered on these remanded issues. As these additional issues concern legal issues distinct from the question of whether there was a disqualifying *separation* from the employment, Iowa Code section 96.3(7)(b) would not apply.

DECISION:

The November 30, 2009, reference 03 decision is modified as follows. The claimant was overpaid benefits totaling \$17,626.00 for the period of *November 2, 2008 through October 24, 2009*. Under Iowa Code section 96.3(7)(b)(1), the claimant is not subject to recovery of the \$17,626.00 overpayment in connection with any of the above decisions that address her *separation(s)* from the employment.

This matter is remanded to the Claims Division so that decisions may *finally* be entered regarding whether the claimant met the work *ability* and *work availability* requirements of Iowa Code section 96.4(3) *for the entire period of August 17, 2008 through October 24, 2009*.

This matter is remanded to the Claims Division for determination of whether the claimant met the \$250.00 minimum earnings requirements of Iowa Code section 96.4(4) in connection with the claim for the second claim year that was effective August 16, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css