

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AFI M VIOTEY
Claimant

APPEAL NO. 11A-UI-16369-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/31/10
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Afi M. Viotey filed a timely appeal from an unemployment insurance decision dated December 15, 2011, reference 02, that ruled she had been overpaid \$6,516.00 in benefits for the 18 weeks ending May 14, 2011 because of an administrative law judge decision dated May 20, 2011 that had disqualified her for benefits. After due notice was issued, a telephone hearing was held January 26, 2012 with Ms. Viotey participating. The administrative law judge takes official notice of agency decision records and fact-finding records.

ISSUE:

Has the claimant been overpaid?

FINDINGS OF FACT:

Afi M. Viotey received unemployment insurance benefits totaling \$6,516.00 for the 18 weeks ending May 14, 2011. Her former employer, Schenker Logistics, Inc. did not take part in the fact-finding interview but submitted documents detailing days of absence without contact that led to Ms. Viotey's separation. On May 20, 2011, administrative law judge decision 11O-UI-05435-JTT reversed the fact-finding decision and disqualified Ms. Viotey for benefits. She did not file an appeal because she had found another job by that time.

REASONING AND CONCLUSIONS OF LAW:

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 section of the law set forth above requires that unemployment insurance benefits paid in error be repaid under some circumstances. The factual question here is whether Ms. Viotey's prior employer, Schenker Logistics, Inc., adequately participated in the fact-finding process. Fact-finding records show that the employer did not take part in the fact-finding interview. However, it does establish that the employer provided documentation. After reviewing these records, the administrative law judge concludes that if the documentation had been the only information available to the fact finder, the fact finder would have ruled for the employer. The administrative law judge further concludes that the employer met the statutory requirement of participating adequately in the fact-finding process. The benefits must be repaid.

DECISION:

The unemployment insurance decision dated December 15, 2011, reference 02, is affirmed. The claimant has been overpaid \$6,516.00 for the 18 weeks ending May 14, 2011.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs