

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY ETSCHIEDT
Claimant

APPEAL NO. 12A-UI-13053-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/22/12
Claimant: Appellant (4)

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated October 25, 2012, reference 03, which held that the claimant had been overpaid unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 26, 2012. This case was heard in conjunction with 12A-UI-13052-VST.

ISSUE:

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The findings of fact in 12A-UI-13052-VST are incorporated by reference herein.

The claimant received unemployment insurance benefits for the weeks ending April 28, 2012; May 5, 2012; May 12, 2012; and May 29, 2012, in the total amount of \$1,540.00.

REASONING AND CONCLUSIONS OF LAW:

The reasoning and conclusions of law in 12A-UI-12052-VST are incorporated by reference herein.

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 claimant has been overpaid unemployment insurance benefits in the total amount of \$1,368.00. This is computed as follows:

Week Ending April 28, 2012 -- \$385.00
Week Ending May 5, 2012 -- \$385.00
Week Ending May 12, 2012 -- \$385.00
Week Ending May 19, 2012 -- \$213.00 (\$385.00 minus \$172.00)

These benefits must now be repaid.

DECISION:

The decision of the representative dated October 25, 2012, reference 03, is modified in favor of the claimant. The claimant has been overpaid unemployment insurance benefits due to non-reported vacation pay in the amount of \$1,368.00

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css