

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONIKA CHAPMAN
Claimant

APPEAL NO: 12A-UI-07643-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01-01-12
Claimant: Appellant (3R)

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 18, 2012, reference 05, decision that determined she was overpaid benefits in the amount of \$2,280.00 for the six weeks ending April 21, 2012. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 19, 2012. The claimant participated in the hearing with Attorney Shelley Whitcher.

ISSUE:

The issue is whether the claimant is overpaid unemployment insurance benefits regarding her claim for benefits from the week ending January 7 through the week ending March 3, 2012, because it was determined she was not able and available for work during that time period.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The overpayment issue in this case was created by a disqualification decision, 12A-UI-03591-ET, dated May 2, 2012, that has now become final. That decision was in reference to whether the claimant was able and available for work from January 7, 2012 through March 3, 2012, at which time she was separated from her employment. The administrative law judge concluded the claimant was not able and available for work from January 7 through March 3, 2012, and remanded the separation and overpayment issues to the Claims Section for an initial determination and adjudication. The fact finder then issued a decision finding the claimant was overpaid benefits for the six weeks ending April 21, 2012. Those dates are incorrect and refer to the dates unemployment benefits were collected following the claimant's separation from employment rather than the able and available for work decision.

While there are waiver provisions for overpayment of benefit cases involving a separation from employment, the waiver does not apply when the issue is whether the claimant is able and available for work, regardless of whether the employer participates in the fact-finding hearing.

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 been overpaid unemployment insurance benefits for the nine weeks ending March 3, 2012, in the amount of \$3,420.00 pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now become final.

DECISION:

The June 18, 2012, reference 05, decision is modified in favor of the respondent. The claimant has been overpaid unemployment insurance benefits in the amount of \$3,420.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css