

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY L BONNETT
Claimant

APPEAL NO. 09A-UI-15887-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Original Claim: 08-16-09
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

The claimant appealed the October 13, 2009, reference 02, representative's decision that concluded claimant is obligated to repay unemployment insurance benefits in the gross amount of \$780.00 for the three-week period ending July 25, 2009 as a result of representative's ineligibility decision dated August 11, 2009, reference 04. A telephone hearing was held on November 16, 2009, pursuant to due notice. The claimant participated. Claimant's Exhibit A was received.

ISSUE:

The issue is whether claimant received and is obligated to repay the gross amount of unemployment insurance benefits received for the period in question.

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 an ineligibility decision of representative dated August 11, 2009 that found the claimant not eligible for one week of benefits for the period from June 14, 2009 through June 20, 2009 due to her not being able to and available for work. The representative's decision at issue here found the claimant overpaid for the three-week period ending July 25, 2009 and is clearly erroneous. The claimant was never disqualified for benefits in July 2009 and the representative decision at issue here should be modified in favor the claimant appellant.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant has been overpaid benefits for only the one-week period ending June 20, 2009.

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 administrative law judge concludes that the employer did participate in the fact-finding interview. Although claimant did not engage in any fraud or willful misrepresentation to obtain the benefits, she received benefits to which she was not entitled according to the representative's decision referenced above. Those benefits must be recovered in accordance with the provisions of Iowa law. However the administrative law judge further concludes that the claimant only received benefits to which she was not entitled for the one-week period ending June 20, 2009 and further that the claimant has already repaid the benefits to the Agency.

DECISION:

The October 13, 2009, reference 02, representative's decision is modified in favor of the appellant. The claimant has received unemployment insurance benefits in the amount of \$386.00 to which she was not entitled and those benefits have been recovered in accordance with Iowa law. The claimant has no current overpayment of benefits due to the Agency.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw