

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE S BARTON
Claimant

APPEAL NO: 12A-UI-10297-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 11/29/09
Claimant: Appellant (1/R)

Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 22, 2012 determination (reference 02) that held her overpaid \$3,038.54 in benefits she received for the weeks ending January 8 through March 12, 2011. The claimant participated in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant has been overpaid the Emergency Unemployment Compensation benefits she received, but the issue of whether the Department will waive this overpayment will be remanded to the Department to determine.

ISSUE:

Has the claimant been overpaid benefits she received for the weeks ending January 8 through March 12, 2011?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of November 29, 2009. She filed claims for the weeks ending January 22 through March 12, 2011. She received her maximum weekly benefit amount of \$312 for these weeks except the week ending March 12. For the week ending March 12, 2011, the claimant received \$230.54 in benefits. The claimant received Emergency Compensation benefits for all these weeks.

A March 8, 2011 determination (reference 01) denied the claimant benefits as of January 2, 2011, because she was not considered unemployed. The claimant appealed the March 8, 2011 determination. On April 7, 2011 a hearing was held and both parties participated. Based on the evidence presented at the hearing, an administrative law judge affirmed the March 8, 2011 determination. See decision for appeal 11A-UI-02998-AT. The claimant did not appeal this decision to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7).

Based on the decision for appeal 11A-UI-02998-AT, the claimant was not legally entitled to receive benefits for the weeks ending January 8 through March 12, 2011. The claimant has been overpaid \$3038.54 in Emergency Unemployment Compensation (EUC) benefits she received for these weeks.

Recovery of an overpayment of EUC benefits may be waived under some circumstances. See 871 IAC 24.50(7). In determining if an overpayment should be waived, the Department must consider whether the claimant was at fault for the overpayment and whether repayment would be contrary to equity and good conscience¹. The issue of whether the overpayment should be waived will be remanded to the Department to determine.

DECISION:

The representative's August 22, 2012 determination (reference 02) is affirmed. The claimant is not legally entitled to receive benefits for the weeks ending January 8 through March 12, 2011. She has been overpaid \$3038.54 in Emergency Unemployment Compensation benefits she

¹ 871 IAC 24.50(7) provides:

Waiver of overpayments.

a. Individuals who have received amounts of temporary extended unemployment compensation to which they were not entitled shall be required to repay the amounts of such temporary extended unemployment compensation except that the state repayment may be waived if the workforce development department determines that:

(1) The payment of such temporary extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors shall be considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the temporary extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and which was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors shall be considered:

(1) Whether the overpayment was the result of a decision on appeal;

received for these weeks. The issue of whether the claimant is eligible for a waiver of the overpayment is **Remanded** to the Department to determine. The Department shall issue an appealed determination addressing the waiver issue.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw