

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEARL A PHILP
Claimant

APPEAL NO. 10A-UI-14616-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/20/09
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Pearl A. Philp filed a timely appeal from an unemployment insurance decision dated October 14, 2010, reference 05, that ruled she must repay unemployment insurance benefits in the gross amount of \$3,717.00 for the nine weeks ending May 22, 2010. After due notice was issued, a telephone hearing was held November 27, 2010, with Ms. Philp participating and presenting additional testimony by Judy Wright-Mays.

ISSUE:

Must the claimant repay the benefits she has received?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Pearl A. Philp received unemployment insurance benefits in the gross amount of \$3,717.00 for the nine weeks ending May 22, 2010. After being awarded unemployment insurance benefits at the fact-finding level, an administrative law judge decision disqualified her for benefits on June 2, 2010. The Employment Appeal Board affirmed that decision on July 27, 2010. The claimant requested that the Board reconsider. After reconsideration, the Board again denied benefits. Ms. Philp has not filed a petition for judicial review of the Board's decision. The claimant's former employer participated in the fact-finding interview.

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.

Under some circumstances, an individual must repay unemployment insurance benefits the individual has received. The evidence in this record establishes that Ms. Philp received the benefits in question, that the decision denying benefits has not been reversed, and that the employer participated in the fact-finding process. Under these circumstances, Ms. Philp must repay the benefits she received for the nine weeks ending May 22, 2010.

DECISION:

The unemployment insurance decision dated October 14, 2010, reference 05, is affirmed. The claimant has been overpaid \$3,717.00 for the nine weeks ending May 22, 2010. The benefits must be repaid.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw