

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA M STRONG
Claimant

APPEAL NO. 08A-UI-06562-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/01/08 R: 03
Claimant: Appellant (2)

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Teresa Strong filed a timely appeal from the July 11, 2008, reference 03, decision that she had been overpaid \$1,119.00 for three weeks between June 15, 2008 and July 5, 2008, due to a severance pay issue. After due notice was issued, a hearing was held on July 30, 2008. Ms. Strong participated. Exhibits A and B and Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-06560-JTT and 08A-UI-06561-JTT, concerning vacation pay and severance pay, respectively. The administrative law judge hereby takes official notice of both decisions.

ISSUE:

Whether the claimant has been overpaid \$1,119.00 for three weeks between June 15, 2008 and July 5, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Strong established a claim for unemployment insurance benefits that was effective June 1, 2008. At the time Ms. Strong established her claim for benefits, Workforce Development calculated her weekly benefit amount to be \$373.00. For the week that ended June 7, Ms. Strong received vacation pay that exceeded her weekly benefits amount. See Appeal Number 08A-UI-06560-JTT. For the week that ended June 14, 2008, Ms. Strong received \$292.00 in vacation pay that a Workforce Development representative correctly apportioned to the first two working days of that week. See Appeal Number 08A-UI-06560-JTT. For the week that ended June 14, 2008, a Workforce Development representative erroneously apportioned \$410.85 in severance pay.

The three weeks at issue in the overpayment decision Ms. Strong has appealed are the weeks ending June 21, June 28, and July 5, 2008. For each of these weeks, a Workforce Development representative erroneously apportioned severance pay that exceeded

Ms. Strong's weekly benefit amount. The severance pay decision that prompted the overpayment decision has been reversed on appeal. See Appeal Number 08A-UI-06581-JTT. Accordingly, the administrative law judge concludes that Ms. Strong has not been overpaid \$1,119.00 for three weeks between June 15, 2008 and July 5, 2008.

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 states pursuant to section 602.10101.

Because the severance pay decision that prompted the overpayment decision has been reversed on appeal, the administrative law judge concludes that Ms. Strong has not been overpaid \$1,119.00 for three weeks between June 15, 2008 and July 5, 2008.

DECISION:

The Agency representative's July 11, 2008, reference 03, decision is reversed. The claimant has not been overpaid \$1,119.00 for three weeks between June 15, 2008 and July 5, 2008.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css