

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI L GLIDEWELL
Claimant

APPEAL NO. 10A-UI-16561-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/27/10
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Terri L. Glidewell filed a timely appeal from an unemployment insurance decision dated November 23, 2010, reference 02, that ruled she had been overpaid \$3,525.00 in unemployment insurance benefits for the 12 weeks ending September 25, 2010. Due notice was issued for a telephone hearing to be held December 22, 2010. Ms. Glidewell did not provide a telephone number at which she could be contacted. The administrative law judge takes official notice of Agency benefit payment records and decision records. His search for fact-finding records was unsuccessful.

ISSUE:

Must the claimant repay the benefits she has received?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Terri L. Glidewell received unemployment insurance benefits in the gross amount of \$3,525.00 for the 12 weeks ending September 25, 2010. Although benefits had been awarded to Ms. Glidewell at the fact-finding level, an administrative law judge decision in Appeal 10A-UI-11712-BT, issued on October 8, 2010, reversed that decision and disqualified her for benefits. Ms. Glidewell has appealed that decision to the Employment Appeal Board. As of the date of this hearing, the Board had not issued its ruling.

There is no evidence in this record as to the level of participation by the claimant's former employer, Hy-Vee, Inc., in the fact-finding process.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant must repay the benefits that she has received. Unless or until the disqualification decision is reversed by the Employment Appeal Board, the claimant must do so.

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.

Iowa Code section 96.3-7 requires that unemployment insurance benefits paid in error be repaid to the Agency unless it is shown that the overpayment arose from a fact-finding interview in which the employer participated unsuccessfully but prevailed on appeal. It is implicit from the overpayment fact-finding decision that Hy-Vee had participated in the fact-finding process. The claimant has provided no evidence to the contrary. Thus, as it stands, the benefits must be repaid.

The Employment Appeal Board has jurisdiction to reverse the earlier administrative law judge decision. If it does so, that reversal would wipe out the overpayment.

DECISION:

The unemployment insurance decision dated November 23, 2010, reference 02, is affirmed. The claimant has been overpaid \$3,525.00 for the 12 weeks ending September 25, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw