

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIRIDIANA CHAVEZ
Claimant

APPEAL NO. 13A-UI-11166-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/02/13
Claimant: Appellant (4)

Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated September 20, 2013, reference 06, that held she is overpaid benefits \$3,303.00 for the nine weeks ending August 31, 2013 due to an Administrative Law Judge (ALJ) decision that disqualified her. A hearing was held on October 23, 2013. The claimant participated.

ISSUE:

The issue is whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: Claimant filed an unemployment (UI) claim effective June 2, 2013. Claimant claimed for and received benefits totaling \$3,303.00 during a nine week period ending August 31. The department issued a decision dated June 19, 2013, reference 01, that allowed claimant benefits. The employer did not participate in department fact finding but it appealed.

An ALJ issued a September 6, 2013 decision (13A-UI-07732-DWT) that reversed the department decision and disqualified claimant as a voluntary quit without good cause. The ALJ remanded the overpayment issue to the department for a decision. Claimant appealed the ALJ decision to the Employment Appeal Board (EAB) on September 23 with the understanding it covered both the employment separation and overpayment issues. The EAB has not ruled on claimant's appeal.

The claimant received benefits are not due to any fraud or willful misrepresentation.

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.

The administrative law judge concludes claimant is overpaid benefits \$3,303 due to a department ALJ decision (Appeal Number 13A-UI-07732-DWT). The overpayment is due to claimant receiving \$3,303.00 benefits before she was disqualified by the ALJ decision.

As to the issue of employer fact-finding participation, 871 IAC 24.10(1) states it is submitting detailed factual information of the quantity and quality that if un-rebutted would be sufficient to result in a decision favorable to the employer. Live testimony or firsthand knowledge is the most effective means to participate. Written or oral statements or general conclusions with supporting detailed factual information and after fact-finding submissions are not considered participation.

The administrative law judge further concludes claimant is granted payment relief from the overpayment and is not obligated to repay it. The employer did not participate in department fact finding and the ALJ reversal decision is based on the individual's employment separation from employment. There is no evidence of claimant fraud or willful misrepresentation that led to the benefit overpayment.

DECISION:

The decision of the representative dated September 20, 2013, reference 06, is modified in favor of claimant. Claimant is overpaid benefits \$3,303.00, but she is granted relief from repayment of the overpayment due to the failure of the employer to participate in department fact finding regarding the employment separation.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css