

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FLOR RIVERA
Claimant

APPEAL NO. 11O-EUCU-00398-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/26/08
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

On November 10, 2010, claimant appealed a fact-finding decision dated November 2, 2010, reference 01, that concluded claimant was overpaid unemployment insurance benefits in the amount of \$497.00 as a result of a disqualification decision. A telephone hearing was scheduled for and held on January 3, 2011, pursuant to due notice. The claimant did not participate. The claimant apparently appealed to the Employment Appeal Board (Board). Initially, the Board affirmed Administrative Law Judge Scheetz's decision on March 16, 2011. On April 1, 2011, the claimant filed an application for rehearing which the Board granted. The Board issued a rehearing, decision on April 14, 2011, which found that the claimant did not appear at the January 3, 2011 phone hearing before Administrative Law Judge Scheetz because she did not know the hearing was taking place. The Board remanded the matter back to the Appeals Bureau with instructions to hold a new hearing. On May 11, 2011, a new hearing was held before the undersigned administrative law judge. The issues were incorrectly listed on the hearing notice, but the claimant agreed to continue with the hearing despite this procedural error.

ISSUE:

The issue is whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The undersigned administrative law judge took administrative notice of the agency's files in this matter. The overpayment issue in this case was created by a fact-finding disqualification on November 6, 2009. It held that claimant had quit her job on October 7, 2009, to accept other employment, which never occurred. That decision was never appealed and became final on November 17, 2009. Claimant was therefore overpaid \$497.00 for the two weeks from October 4 to October 17, 2009. The claimant acted in good faith.

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 that claimant is overpaid unemployment insurance benefits in the amount of \$497.00 for the two weeks ending October 17, 2009, pursuant to Iowa Code section 96.3-7, as the disqualification decision that created the overpayment decision was never appealed. The claimant acted in good faith and the overpayment was not her fault. She did, however, receive benefits to which she was not entitled according to the final agency decision dated November 6, 2009.

DECISION:

The decision of the representative dated November 2, 2010, reference 01, is affirmed. Claimant is overpaid unemployment insurance benefits in the amount of \$497.00.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/kjw