

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LINDA D KENNEL
1435 ARTHUR AVE
DES MOINES IA 50316

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 05A-UI-03099-DT
OC: 02/06/05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Linda D. Kennel (claimant) appealed a representative's March 18, 2005 decision (reference 02) that concluded she had been overpaid unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on April 12, 2005. This appeal was consolidated for hearing with one related appeal, 05A-UI-03098-DT. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision reversing the representative's decision.

FINDINGS OF FACT:

A representative issued a decision dated March 15, 2005 (reference 01) that concluded the claimant was disqualified from receiving benefits in connection with her employment with Gordman's (employer). The claimant timely appealed that decision and in the concurrently issued decision in appeal 05A-UI-03098-DT that decision has been modified to as to substantially remove the claimant's disqualification as it resulted in the overpayment as determined in the representative's decision that is the subject of this case. The decision in 05A-UI-03098-DT concluded in essence that the claimant was eligible for partial unemployment insurance benefits in the first quarter 2005 where her weekly wages did not reach \$176.70 and in the second quarter 2005 where her weekly wages did not reach \$190.65). The claimant was only paid unemployment insurance benefits that were later found to be overpaid for weeks in the first quarter where her weekly wage was less than \$123.00 (her eligibility earnings limit).

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is overpaid benefits of \$92.00.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant is not overpaid benefits due to the disqualification decision issued on March 15, 2005 (reference 01), which has now been modified to essentially remove the disqualification.

DECISION:

The representative's March 18, 2005 decision (reference 02) is reversed. The claimant is not overpaid benefits.

ld/sc