

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M NEMEC
Claimant

APPEAL NO. 11A-UI-14350-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/03/10
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

An appeal was filed from a representative's decision dated October 21, 2011, reference 04, that held she is overpaid benefits \$10,528.00 for the 28-week period ending October 1, 2011, because of the department October 20 decision that disqualified her from receiving extended benefits.. A hearing was held on November 30, 2011. The claimant, and her husband, Rick, 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: The department issued a decision dated October 20, 2011, reference 03, that amends 02, that disqualified the claimant and caused her to be overpaid \$10,528.00. The decision has been affirmed (#11A-UI-14349-ST). The claimant does not dispute the department record she was paid the benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 the claimant is overpaid benefits \$10,528.00 due to a department decision that has been affirmed. The department issued a decision on October 20, 2011 which has been affirmed in Appeal #11A-UI-14349-ST. Although it does appear the claimant received the benefits in good faith as the department failed to timely recognize her Illinois wages, the no-fault recovery statute does not provide any relief.

DECISION:

The decision of the representative dated October 21, 2011, reference 04, is affirmed. The claimant is overpaid benefits \$10,528.00.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs