

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HORTENSE F ANOUBON MOMO**  
Claimant

**APPEAL NO. 08A-UI-11590-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/13/08 R: 03  
Claimant: Appellant (4)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

Claimant appealed the December 1, 2008, reference 03, decision that concluded claimant was overpaid unemployment insurance benefits in the amount of \$5,669.00 "however, due to the new Iowa law the overpayment has been removed." The next paragraph of the decision states that "the overpayment must be repaid before any further unemployment insurance benefits are paid to you." A telephone hearing was not held as scheduled on December 29, 2008, because the second paragraph of the decision was included in error.

**ISSUE:**

The issue is whether claimant must repay the benefits for the 15-week period ending November 10, 2008.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The overpayment issue in this case was created by an appeal decision that reversed the separation allowance of benefits and remanded for a determination of whether the overpayment is required to be repaid based upon the 2008 amendment to Iowa Code § 96.3(7). The Claims Division of IWD issued a decision stating that because of the new law the overpayment has been removed but erroneously included an internally contradictory paragraph in its form decision indicating the overpayment must be repaid.

**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 states pursuant to section 602.10101.

The administrative law judge concludes that because the overpayment at issue has been removed, claimant is not obligated to repay the amount at issue pursuant to Iowa Code § 96.3(7) (amended 2008).

**DECISION:**

The December 1, 2008, reference 03, decision is modified in favor of the appellant. The overpayment amount is removed and claimant shall not be required to repay it.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css