

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CYNTHIA R WASHINGTON
Claimant

APPEAL 16R-UI-13836-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/01/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed the October 25, 2016, (reference 14), decision that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$3487.00 as a result of an agency error. After due notice was issued, a telephone hearing was held on January 26, 2017. The claimant did participate.

ISSUE:

Has the claimant been overpaid unemployment insurance benefits?

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 error made by Iowa Workforce Development when the claimant's claim for benefits was unlocked and she was paid \$3487.00 for the eleven week period from July 30, 2016 through October 8, 2016. The claimant was not eligible for benefits during that time period. The error was made by the agency, not the claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.3(7)a-b, 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) (a) 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 employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) 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.

(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 has been overpaid unemployment insurance benefits in the amount of \$3487.00 pursuant to Iowa Code Section 96.3-7. The law provides that even if an employee such as the claimant is overpaid unemployment insurance benefits through no fault of their own, they must repay the agency for benefits mistakenly received. The claimant had not earned ten times her weekly benefit amount after her disqualifying separation from St. Luke's Hospital (see EAB decision 16B-05930) before she began receiving benefits in July 2016.

DECISION:

The October 25, 2016, (reference 14) decision is affirmed. The claimant has been overpaid unemployment insurance benefits in the amount of \$3487.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs