

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MERRIANNE R BROWN Claimant	68-0157 (9-06) - 3091078 - EI
IOWA WORKFORCE DEVELOPMENT DEPARTMENT	APPEAL NO: 13A-UI-13213-DT ADMINISTRATIVE LAW JUDGE DECISION OC: 08/05/12 Claimant: Appellant (1)

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Merrienne R. Brown (claimant) appealed a representative's November 21, 2013 decision (reference 03) 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 December 26, 2013. 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.

ISSUES:

Was the claimant overpaid unemployment insurance benefits of \$4,331.00? Is the overpayment subject to recovery?

FINDINGS OF FACT:

The claimant established an unemployment insurance benefit year effective August 5, 2012. She had a separation from employment with employer Git-N-Go Convenience Stores, Inc. on or about June 13, 2013. A fact-finding interview was scheduled for and held with with a Claims representative on July 12, 2013. There was indication made in the notes made by the Claims representative who did the fact-finding interview on July 12 that both the claimant and a witness for the employer, a Lanette Butt, participated and provided verbal statements to the Claims representative. The representative issued a decision dated July 12, 2013 (reference 02) that concluded the claimant was eligible to receive benefits based on the facts of the separation.

The employer appealed the representative's decision. A hearing before an Appeals administrative law judge was conducted on September 17, 2013. During the hearing the parties stipulated that the employer had participated in the preceding fact-finding interview. On September 30, 2013 that judge issued a decision in appeal 13A-UI-08473-JT which reversed the representative's decision and found the facts of the separation were disqualifying as to the claimant. The administrative law judge's decision noted the stipulation regarding the employer's participation in the fact-finding interview, and then remanded the matter to Claims for

determination as to the amount overpayment. The overpayment decision issued in this present case is a result of the remand in the judge's decision issued on September 30, 2013 in 13A-UI-08473-JT. As of the date of the hearing in this present case the claimant had not made an appeal of the September 30, 2013 decision in 13A-UI-08473-JT to the Employment Appeal Board.

The claimant received unemployment insurance benefits after the ending of the employment with the employer in the period from June 23 through September 21, 2013 in the amount of \$4,331.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is overpaid benefits of \$4,331.00.

This decision was issued as a result of the disqualification issued in the administrative law judge's September 30, 2013 decision in 13A-UI-08473-JT. If the claimant had a dispute with whether or not she should have been disqualified as a result of the separation from the employer, then she needed to have filed an appeal from that decision within the appeal period for that decision. Iowa Code § 96.6-2; *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373 (Iowa 1979). The decision causing the disqualification has now become final and is not subject to review in this case. In this case, unless or until the administrative law judge's decision in 13A-UI-08473-JT is reversed, the claimant has received benefits but was ineligible for those benefits.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The question as to whether the employer did participate in the fact-finding interview has already been subject to a prior adjudication and is not subject to further review or consideration in this case. Iowa Code § 96.6(2). In that adjudication the administrative law judge concluded that the non-recovery provision did not apply since the employer had participated in the fact-finding interview. Iowa Code § 96.3-7.

Therefore, the administrative law judge concludes that the claimant is overpaid benefits of \$4,331.00 pursuant to Iowa Code § 96.3-7 due to the administrative law judge's September 30, 2013 decision in 13A-UI-08473-JT. Even if those benefits had been received in good faith, the overpaid benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's November 21, 2013 decision (reference 03) is affirmed. The claimant is overpaid benefits of \$4,331.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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