

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA A WHEELER
Claimant

APPEAL NO. 10A-EUCU-01070-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/19/09
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Lisa A. Wheeler filed a timely appeal from an unemployment insurance decision dated October 28, 2010, reference 03, that ruled she had been overpaid benefits in the gross amount of \$2,483.89 for 56 weeks between April 19, 2009 and May 22, 2010 because of a redetermination of her benefits that had reduced her weekly or maximum benefit amount. Due notice was issued for a telephone hearing to be held Saturday, December 4, 2010. At the claimant's request, it was held instead on November 29, 2010 with Ms. Wheeler participating. The administrative law judge takes official notice of Agency benefit payment records and decision records.

ISSUE:

Has the claimant been overpaid?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Lisa A. Wheeler filed a claim for unemployment insurance benefits effective April 19, 2009. Her weekly and maximum benefit amounts were based on all wages from all employers paid to her during calendar year 2008. Among those wages, were wages paid by an employer known as Emidel, a Casey's Marketing Company franchise. Emidel was acquired by Casey's Marketing Company and all wage credits earned from that company were transferred to Casey's. On May 22, 2009, the Agency issued a fact-finding decision holding that Ms. Wheeler had voluntarily left part-time employment with Casey's without good cause attributable to the employer. Since Ms. Wheeler had sufficient wage credits, she was allowed to continue receiving benefits. Only in October of 2010, several months after Ms. Wheeler had stopped requesting benefits did the Agency realize that it had not deleted the wages from Emidel that had been transferred to Casey's. The Agency then redetermined Ms. Wheeler's benefits based upon the lower amount of wages paid to her in 2008. After those computations had been completed, Ms. Wheeler was found to have received \$2,483.89 in benefits that she would not have received had the Emidel wages been deleted in 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 statute requires that benefits paid by the Agency in error be repaid, even if the individual who received the benefits was not at fault for the overpayment. It is clear from the evidence in this record that Ms. Wheeler did not cause the overpayment. Nonetheless, since she received benefits to which she was not eligible, she must repay them.

DECISION:

The unemployment insurance decision dated October 28, 2010, reference 03, is affirmed. The claimant has been overpaid \$2,483.89 for 56 weeks between April 19, 2009 and May 22, 2010.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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