

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTIN M MONTESDEOCA**  
Claimant

**APPEAL NO: 13A-UI-00143-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/01/12  
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits/Waiver of Overpayment

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's December 27, 2012 determination (reference 03) that held her overpaid \$892.00 in benefits she received for the weeks ending September 15 through October 13, 2012. The overpayment occurred as the result of an administrative law judge's November 15, 2012 decision.

The claimant participated at the hearing. David Cruse was also at the hearing with the claimant. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant has been overpaid \$892.00 in benefits.

**ISSUES:**

Has the claimant been overpaid the benefits she received for the weeks ending September 15 through October 13, 2012?

Is the claimant eligible for a waiver of the overpayment?

**FINDINGS OF FACT:**

The claimant established a claim during the week of January 1, 2012. She reopened her claim during the week of September 9, 2012. She filed claims for the weeks ending September 15 through October 13, 2012. She received her maximum weekly benefit amount of \$208.00 for each week.

A claims specialist contacted the claimant and employer to ask why the claimant's employment ended. The employer participated at the fact-finding interview and sent in some documents about the employer's policies. Based on the information provided by the employer and the claimant, an October 9, 2012 determination (reference 02) held the claimant qualified to receive benefits. The employer appealed this determination.

A hearing was held before an administrative law judge on November 6, 2012. The claimant did not respond to the hearing notice or participate in the hearing. The employer participated at the hearing. Based on the employer's testimony, an administrative law judge reversed the

October 9, 2012 determination and concluded the claimant was not qualified to receive benefits. See decision for appeal 12A-UI-12209-ET. The claimant did not appeal this decision to the Employment Appeal Board.

**REASONING AND CONCLUSIONS OF LAW:**

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. The overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7)b.

In this case, the initial determination held the claimant qualified to receive benefits. Later, an administrative law judge reversed the initial determination and held the claimant was not qualified to receive benefits. Based on the decision for 12A-UI-12209-ET, the claimant has been overpaid \$892 in benefits she received for the weeks ending September 15 through October 13, 2012. The claimant is **not** at fault in receiving the overpayment.

Since the employer participated at the initial proceeding, the fact-finding interview, the claimant is not eligible for a waiver of the overpayment.

The administrative record indicates that as of March 23, 2013, the overpayment has been offset by benefits the claimant was entitled to receive for the weeks ending February 23 through March 23, 2013. Therefore, as of March 23, 2013, the claimant does not owe any money to the Department.

**DECISION:**

The representative's December 27, 2012 determination (reference 03) is affirmed. Based on the decision for appeal 12A-UI-12209-ET, the claimant was not legally entitled to receive benefits as of September 9, 2012. She has been overpaid \$892.00 in benefits she received for the weeks ending September 15 through October 13, 2012. Even though the claimant is **not** at fault in receiving the overpayment, she is required to pay back the overpayment. As of March 23, 2013, the claimant does not owe any money to the Department because the overpayment has been offset by benefits the claimant was entitled to receive for the weeks ending February 23 through March 23, 2013.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css