

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JOYCE C RUSSELL  
108 N HILL ST  
FERTILE IA 50434

IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT

Appeal Number: 06A-UI-07721-DT  
OC: 03/20/05 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Joyce C. Russell (claimant) appealed a representative's July 31, 2006 decision (reference 01) that concluded she had been overpaid \$858.00 in unemployment insurance benefits for the claim year ending March 19, 2006 because of a redetermination of her weekly benefit amount for that claim year. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on August 17, 2006. The claimant participated in the hearing. During the hearing, Exhibits A-1 and A-2 were entered into evidence. During the hearing, the claimant consented to the administrative law judge seeking further information from sources within the Agency.

Through that contact, the administrative law judge was provided with additional background and explanatory documents, which were then sent to the claimant. Exhibit A-3 is a two-page printout showing the quarters, amounts and employer accounts charged for benefits paid to the claimant; Exhibit A-4 is a statement of charges dated January 15, 2006 for benefits paid to the claimant in the fourth quarter of 2005 which were assessed against the employer account of the City of Fertile. Exhibit A-5 is a copy of e-mail correspondence between a representative of the City of Fertile and an Agency representative. Exhibit A-6 is a copy of an e-mail dated July 28, 2006 from the Agency representative to the city's representative. These additional exhibits will be admitted into the record unless the claimant makes a written objection to the administrative law judge within five days of the issuance of this decision. Based on the evidence, the arguments on behalf of the claimant and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

#### FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective March 20, 2005. The separation was due to a business closing of a prior employer, entitling the claimant to an additional 13 weeks of benefits. The original on-line monetary determination issued on March 21, 2006 calculated the claimant's benefit amount based upon her base period wages of record as \$256.00 per week and her maximum benefit amount as \$9,984.00 (\$256.00 x 39). She received that amount for the 39 weeks ending December 17, 2005.

The March 21, 2005 determination was based on wages including wages reported by the City of Fertile in the fourth quarter of 2003, the oldest quarter in the employer's base period. As the oldest quarter, charges against employers in that quarter are the last to be charged back, pursuant to the statutory requirement that benefits be charged against employers in "inverse chronological order as the wages on which the wage credits are based were paid."<sup>1</sup> As a result, it was only at the end of the claimant's collection of benefits in the fourth quarter 2005 that the City of Fertile became chargeable. The statement of charges for those benefits was sent to the City of Fertile on January 15, 2006.

On May 24, 2006, a representative of the City of Fertile contacted the Benefit Chargeback unit of the Agency to appeal the charges against the city for the benefits paid to the claimant. The representative noted that the claimant was the mayor and was paid annually. The claimant in fact is the elected mayor of the city. The Agency representative responded the next day and informed the city representative that payments made to the mayor should not have been reported to the Agency as wages.<sup>2</sup> The Agency representative then offered to fax a form for a wage adjustment report to the city representative. The city representative replied on June 7 and provided a fax number to which the Agency representative could send the forms. Those forms were subsequently returned, and on July 28 the Agency representative confirmed to the city representative that the incorrectly reported wages for the claimant had been removed, resulting in removal of the city's liability for payment.

---

<sup>1</sup> Iowa Code § 96.3(5).

<sup>2</sup> Iowa Code §96.18(18)a(6)(f) – "the term "employment" does not apply to service performed . . . [in] the employ of a governmental entity, if such service is performed by an individual in the exercise of the individual's duties as an elected official . . ." See also, 871 IAC 23.3(2)(g) – The term "employment" shall not include wages paid by this state or any of its political subdivisions . . . to . . . [an] elected official . . ."; and 871 IAC 23.71(3) – "The term "employment" does not apply to services performed for this state, a political subdivision of this state . . . or an instrumentality of either by an individual who is: an elected official . . ."

As a result of the deletion from the claimant's wage record of the wages incorrectly reported by the city, on July 28, 2006, a corrected monetary determination was issued to the claimant removing the city's wage credits. As a result of the deletion of these wages, the claimant's weekly benefit amount was recalculated to be \$234.00, a difference of \$22.00 per week, totaling \$858.00 for the 39 weeks the incorrect weekly benefit amount was paid. The overpayment decision in this case was then issued on July 31, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was overpaid benefits of \$858.00.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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 mere fact that there was an eight-month passage of time after the final benefits were paid to the claimant before the erroneously reported wages were removed does not preclude the conclusion that the resulting overpayment is valid. Sievertsen v. Employment Appeal Board, 483 N.W.2d 818 (Iowa 1992). Even though those benefits were received in good faith, the overpaid benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's July 31, 2006 decision (reference 01) is affirmed. The claimant was overpaid benefits of \$858.00 due to the claim redetermination.

ld/cs