

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA H TAYLOR
Claimant

APPEAL NO. 11A-UI-05877-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME SHIELD CORP
Employer

OC: 10/25/09
Claimant: Appellant (1)

Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Teresa Taylor filed an appeal from the April 25, 2011, reference 09, decision that she was overpaid \$1,740.00 in benefits for the five-week period ending November 28, 2009. After due notice was issued, a hearing was held by telephone conference call on June 10, 2011. Ms. Taylor participated. The hearing in this matter was consolidated with the hearing in Appeal Numbers 11A-UI-05876-JTT and 11A-UI-07181-JTT. Exhibits D-1 through D-13 were received into evidence.

ISSUE:

Whether Ms. Taylor was overpaid \$1,740.00 in benefits for the five-week period ending November 28, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Taylor established a claim for unemployment insurance benefits that was effective October 25, 2009 and received benefits. The benefits Ms. Taylor received included \$1,740.00 in benefits for the five-week period between October 25, 2009 and November 28, 2009. On December 3, 2009, Iowa Workforce Development mailed a copy of the December 3, 2009, reference 01, decision to Ms. Taylor's last-known address of record. Ms. Taylor received the decision in a timely manner, prior to the deadline for appeal. The decision denied benefits based on an Agency conclusion that Ms. Taylor had voluntarily quit employment due to a non-work related medical issue. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 13, 2009. Ms. Taylor did not file an appeal in response to receiving the reference 01 decision. The December 3, 2009, reference 01 decision denying benefits was affirmed in Appeal Number 11A-UI-05876-JTT.

On December 8, 2009, a Workforce Development representative entered a reference 02 decision that allowed benefits effective November 2, 2009, provided Ms. Taylor met all other eligibility requirements. The decision was based on a conclusion that Ms. Taylor was able and available for work. This was a separate and distinct issue from whether Ms. Taylor had separated from the employment for a reason that disqualified her for benefits or whether she

had requalified for benefits by fulfilling the terms of the December 3, 2009, reference 01 decision regarding the separation.

As part of the proceedings leading to entry of the December 8, 2009, reference 02 decision, Ms. Taylor provided a December 3, 2009 note from her health care provider indicating that she was released to return to the workforce. Ms. Taylor had not provided such documentation to Workforce Development prior to that time. Ms. Taylor had never returned to the employer to offer her services after recovering from the condition that took her off work.

The December 8, 2009, reference 02 decision was later nullified by the June 28, 2010, reference 03 decision because the reference 02 had been entered without notice to the employer and without opportunity for the employer to be heard.

On August 9, 2010, a Workforce Development representative entered a reference 04 decision that allowed benefits effective October 25, 2009, provided Ms. Taylor met all other eligibility requirements. The decision was based on a conclusion that Ms. Taylor was able and available for work. This was a separate and distinct issue from whether Ms. Taylor had separated from the employment for a reason that disqualified her for benefits or whether she had requalified for benefits by fulfilling the terms of the December 3, 2009, reference 01 decision regarding the separation. The reference 04 decision was entered after the employer was given an opportunity to participate and after the employer indicated, through Talx, that it was not contesting the claim for benefits. In connection with the proceedings leading to entry of the August 9, 2010, reference 04 decision, Ms. Taylor resubmitted the December 3, 2009 letter from her health care provider indicating that she was released to the workforce. Ms. Taylor has still not provided documentation to indicate that she was released to work prior to December 3, 2009.

The August 9, 2010, reference 04 decision was later nullified by the April 19, 2011, reference 07 decision, based on an Agency conclusion that the decision was entered in error. The reference 07 decision carried an April 29, 2011 deadline for appeal. Ms. Taylor did not appeal the reference 07 decision.

On October 27, 2010, a Workforce Development representative entered a reference 05 decision that allowed benefits, provided Ms. Taylor was otherwise eligible, based on a conclusion that she had separated from employer Accu Steel, Inc., on September 30, 2010, for a non-disqualifying reason.

On December 7, 2010, a Workforce Development representative entered a reference 06 decision that allowed benefits, provided Ms. Taylor was otherwise eligible. The decision further stated that a decision regarding Ms. Taylor's June 3, 2009 separation from American Home Shield Corporation "was made on a prior claim and that decision remains in effect." This language was erroneous, given that the prior decision in question, the December 3, 2009, reference 01 decision, had *denied* benefits.

On April 20, 2011, a Workforce Development representative entered a reference 08 decision that allowed benefits effective November 29, 2009, provided Ms. Taylor was otherwise eligible, but denied, in the Explanation of Decision, benefits for the period of October 25, 2009 through November 28, 2009. The decision referenced that Ms. Taylor had not been released from the doctor and that she was not able and available for work during the period for which benefits were denied. The reference 08 decision was based on the conclusion that Ms. Taylor was able and available for work effective November 29, 2009. The decision carried an April 30, 2011 deadline for appeal. Ms. Taylor received the decision in a timely manner, prior to the deadline

for appeal. The April 20, 2011 reference 08 decision has been affirmed on appeal. See Appeal Number 11A-UI-07181-JTT.

On April 25, 2011, a Workforce Development representative entered a reference 09 decision that Ms. Taylor was overpaid \$1,740.00 for the five weeks ending November 28, 2009. The decision indicated that the overpayment decision was “due to the decision dated 12-03-09 on an able and available issue with American Home Shield Corp.” This language was erroneous on two counts. First, the December 3, 2009, reference 01 decision had not addressed whether Ms. Taylor was able and available for work, but had instead addressed whether she had separated from the employer for a disqualifying reason. Second, it was the April 20, 2011, reference 08 decision, regarding Ms. Taylor’s ability to work and availability for work, that had prompted the overpayment decision. The reference 08 decision had indicated on its face: “A determination of overpayment will be made.” Ms. Taylor received the decision in a timely manner, prior to the May 5, 2011 deadline for appeal.

On April 29, 2011, Ms. Taylor mailed her appeal from the April 25, 2011, reference 09 overpayment decision. Ms. Taylor attached a copy of the overpayment decision. The mailed appeal was postmarked April 29, 2011. When the Appeals Section received the appeal letter on May 3, 2011, the Appeals Section, based on the language of the overpayment decision, treated the appeal as also an appeal from the December 3, 2009, reference 01 decision. Only later did it become clear that the appeal should also be treated as an appeal from the April 20, 2011, reference 08 decision and it was added to the appeal.

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 weight of the evidence in the record establishes that the claimant was disqualified for benefits based on the December 3, 2009, reference 01 decision and that disqualification remained in effect during the five-week period ending November 28, 2009. The weight of the evidence establishes that the claimant was also disqualified for benefits during the five-week period in question because she had not been released by her doctor to return to work and did not meet the work ability and availability requirements during that period. Because the claimant was not eligible for the benefits she received for the five-week period ending November 28, 2009, those benefits constitute an overpayment of benefits that the claimant must repay to Iowa Workforce Development.

DECISION:

The Agency representative's April 25, 2011, reference 09, decision is affirmed. The claimant was overpaid \$1,740.00 in benefits for the five-week period ending November 28, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs