

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH J FAULKNER**  
Claimant

**APPEAL NO. 08A-UI-06056-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/06/08 R: 01  
Claimant: Appellant (1)**

Iowa Code Section 96.3(7) - Overpayment  
871 IAC 26.8(5) - Decision on the Record

**STATEMENT OF THE CASE:**

Sarah Faulkner appealed from an unemployment insurance decision dated June 26, 2008, reference 03, that she was overpaid \$3,025.00 in benefits for 11 weeks between April 6, 2008 and June 21, 2008. A telephone hearing was scheduled for July 17, 2008. Ms. Faulkner did not respond to the hearing notice instructions and did not participate in the hearing. Based on the appellant's failure to participate in the hearing, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision. The hearing in this matter was to be consolidated with the hearing in appeal number 08A-UI-06055-JTT and the administrative law judge hereby takes official notice of the decision entered in that matter.

**ISSUE:**

Decision on the record.

**FINDINGS OF FACT:**

Appellant Sarah Faulkner was properly notified of the scheduled hearing on this appeal. Ms. Faulkner failed to provide a telephone number at which she could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. There is no evidence the hearing notice was returned by the postal service as undeliverable for any reason.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. Workforce Development records indicate that the claimant received \$3,025.00 in benefits for 11 weeks between April 6, 2008 and June 21, 2008. The overpayment decision on appeal in this matter is based on a disqualification decision that has been affirmed on appeal. See appeal number 08A-UI-06055-JTT.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 administrative law judge has carefully reviewed evidence in the record. Because the overpayment decision on appeal in this matter is based on a disqualification decision that has been affirmed on appeal, the administrative law judge concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

Pursuant to the rule, the appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

**DECISION:**

The Agency representative's June 26, 2008, reference 03, overpayment decision is affirmed. The decision that the claimant was overpaid \$3,025.00 in benefits for 11 weeks between April 6, 2008 and June 21, 2008. remains in effect. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge within 15 days of the date of this decision.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs