

IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

**Appeal Number:** 09-IWDUI-145  
**OC:** 06-08-08  
**Claimant:** Appellant (1)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**SHIRLEY SINCLAIR**  
**116 EDGEWOOD DR.**  
**WEBSTER CITY, IA 50595-3128**

**IOWA WORKFORCE DEVELOPMENT**  
**INVESTIGATIONS AND RECOVERY**  
**1000 EAST GRAND AVENUE**  
**DES MOINES IA 50319-0209**

DAN ANDERSON, IWD

**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, 4th 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 the Department. 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.

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(Administrative Law Judge)

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September 4, 2009  
(Dated and Mailed)

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Iowa Code section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE**

Shirley Sinclair filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated July 1, 2009, reference 01.1 In this decision, the Department determined that Ms. Sinclair was overpaid a net amount of \$4,206 in

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1 Ms. Sinclair's appeal is postmarked June 9, 2009. It is clear, however, that the postmark must be in error. The letter was received by the Department on July 10, 2009 and it is an appeal of the decision that was issued July 1. On June 9, the postmark date, the Department had not even yet issued the decision that is the subject of Ms. Sinclair's appeal letter.

unemployment insurance benefits for the 24 weeks between June 15, 2008 and February 28, 2009. The decision stated that the overpayment resulted from the claimant failing to report sickness and accident pay from Electrolux Home Products.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 14, 2009 for scheduling of a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on July 17, 2009. The hearing was originally set to be held on July 30, 2009. The appellant had a conflict on that date and requested that the hearing be rescheduled. On August 10, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Investigator Jane Connor represented the Department and presented testimony. Appellant Shirley Sinclair appeared and presented testimony. Exhibits 1 and 2 were submitted by the Department and admitted into the record as evidence.

### **ISSUES**

Whether the Department correctly determined that the claimant was overpaid unemployment insurance benefits and, if so, whether the amount of overpayment was correctly calculated.

### **FINDINGS OF FACT**

Shirley Sinclair filed a claim for unemployment benefits with an effective date of June 8, 2008. Ms. Riley made claims for and received unemployment benefits during the fourth quarter of 2008 and the first quarter of 2009. Ms. Sinclair was originally laid off from her job at with Electrolux Home Products in Webster City, Iowa in June, 2008. She claimed unemployment benefits from the week ending June 14, 2008 through the week ending August 30, 2008. In mid-August, 2009, Ms. Sinclair went back to work for Electrolux. She worked there until November, 2009, when she was once again laid off. She then received unemployment benefits for the week ending November 29, 2008 through the week ending February 28, 2009.

For the vast majority of those weeks, Ms. Sinclair reported having received no wages. The Department paid her maximum weekly benefit amount of \$347 for those weeks. Ms. Sinclair did report income for three of the weeks in question, however. In the week ending June 14, 2008, she reported \$629 in wages. She was not paid any unemployment benefits that week because her wages exceeded the limit for benefits to be paid. For the week ending November 29, 2008, Ms. Sinclair reported having received \$258 in holiday pay. On this basis, the Department paid her only \$175 in benefits for that week. For the week ending January 10, 2009, Ms. Sinclair reported having received \$393 in either vacation or holiday pay. On that basis, the Department did not pay her any unemployment benefits that week, as her wages exceeded the cap.

In early May, 2009, the Department received a letter from a representative of Electrolux. The letter stated that Ms. Sinclair had been collecting sickness and accident benefits from November 24, 2008 to the present. Jane Connor, an investigator with the Department, then contacted Lavon Russell, the labor relations manager at Electrolux, in

order to get additional information regarding the sickness and accident benefits. Electrolux made sickness and accident payments to Ms. Sinclair in one lump sum on April 17, 2009 for the time period from June 10, 2008 through August 20, 2008 and from November 24, 2008 through March 2, 2009. This was 26 weeks of sickness and accident benefits, the maximum Electrolux allows. Electrolux's sickness and accident payments are workers' compensation payments; they come directly from Electrolux because it is self-insured. Ms. Russell stated that the gross amount of the check issued April 17 was \$4,919.40. Using the gross amount provided by Ms. Russell and dividing by 26 weeks, the Department determined that Ms. Sinclair received \$189 per week in sickness and accident benefits.

When Ms. Sinclair received the sickness and accident pay in April, Electrolux required her to pay back the holiday and vacation pay she had received during the time periods that she was retroactively compensated for. Consequently, Ms. Sinclair paid back the holiday and vacation pay from the weeks ending November 29, 2008 and January 10, 2009.

After obtaining information about the sickness and accident payment Ms. Sinclair received, the Department determined that Ms. Sinclair had been overpaid during the majority of the time that her sickness and accident pay covered. For the weeks where Ms. Sinclair claimed no wages, the Department determined that she was overpaid \$189 each week.<sup>2</sup>

For the week ending November 29, 2008, Ms. Sinclair reported \$258 in holiday pay and was initially paid \$175 in unemployment benefits. In calculating the overpayment, the Department disregarded the holiday pay since Ms. Sinclair was required to pay that back upon receipt of the sickness and accident pay. The Department determined that Ms. Sinclair actually received \$189 in sickness pay that week and should have been paid \$158 in unemployment benefits. The overpayment for that week was calculated at \$17.

For the week ending January 10, 2009, Ms. Sinclair reported \$393 in vacation or holiday pay and therefore did not receive benefits for the week. As in the week ending November 29, the Department disregarded the vacation or holiday pay in calculating the overpayment because Ms. Sinclair was required to pay it back. The Department determined that Ms. Sinclair actually received \$189 in sickness pay that week and should have been paid \$158 in unemployment benefits. Consequently, Ms. Sinclair was underpaid that week by \$158.

The Department subtracted the underpayment of \$158 from the gross overpayment of \$4,364 to come up with a net overpayment of \$4,206.

Ms. Sinclair had no knowledge during the time she was claiming unemployment benefits that she was entitled to sickness and accident pay from Electrolux or that Electrolux intended to award her sickness and accident pay.

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<sup>2</sup> These are the 23 weeks ending June 21 and 28, July 5, 12, 19, and 26, August 2, 9, 16, 23 and 30, December 6, 13, 20, and 27, January 3, 17, 24, and 31, and February 7, 14, 21, and 28.

## **REASONING AND CONCLUSIONS OF LAW**

Iowa law provides that individuals are disqualified from benefits for any week with respect to which the individual is receiving or has received compensation for temporary disability under the workers' compensation law of any state. <sup>3</sup> The Department has the burden of proving disqualification from benefits because of receipt of workers' compensation payments.<sup>4</sup>

If an individual receives unemployment insurance benefits for which he or she is subsequently determined to be ineligible, IWD can recover those benefits even if the individual acted in good faith and is not otherwise at fault. IWD may recover the overpayment of benefits by requesting payment from the individual directly or by deducting the overpayment from any future benefits payable to the overpaid claimant.<sup>5</sup>

In this case, Ms. Sinclair received workers' compensation payments from Electrolux for the weeks in question. Workers' compensation payments are deducted from unemployment benefits on a dollar-for-dollar basis.<sup>6</sup> The Department correctly determined that \$189 per week should be deducted from Ms. Sinclair's benefit amount in the weeks that were covered by the workers' compensation payments and in which she did not report wages. In the week ending November 29, 2008, the Department correctly determined an overpayment of \$17. For the week ending January 10, 2009, the Department correctly determined an underpayment of \$158.

It should be noted that the fact that an overpayment occurred was not the fault of Ms. Sinclair in any way. She credibly testified that Electrolux gave her no indication she was to receive these payments until the time she received the check in April, 2009. She did not err in failing to report these payments on a week-by-week basis to the Department; she had no idea she was going to receive the payments. It is unfortunate that Electrolux handled the matter in this way because it has clearly resulted in hardship for Ms. Sinclair. The legislature, however, has clearly mandated that overpaid benefits are to be recovered even where the individual who was overpaid acted in good faith. On this basis, the Department's decision must be affirmed.

## **DECISION**

Iowa Workforce Development's decision dated July 1, 2009, reference 1, is **AFFIRMED**. The claimant has been overpaid benefits in the amount of \$4,206.

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<sup>3</sup> Iowa Code § 96.5(5)(a)(2) (2009).

<sup>4</sup> Iowa Code § 96.6(2) (2009).

<sup>5</sup> Iowa Code § 96.3(7)(a) (2009).

<sup>6</sup> 871 IAC 24.13(3)(d).