

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLETTE C BURKLE
Claimant

APPEAL NO: 12A-UI-09851-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/24/10
Claimant: Appellant (1)

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 10, 2012 determination (reference 09) that held her overpaid \$1633 in benefits she received for the weeks ending November 27, 2010, through January 22, 2011. The overpayment occurred as the result of an administrative law judge's May 27, 2011 decision that disqualified her from receiving benefits. The claimant participated in the hearing. Based on the evidence, the claimant's arguments of the parties, and the law, the administrative law judge concludes the claimant has been overpaid benefits she received for the weeks ending November 27, 2010, through January 22, 2011.

ISSUES:

Has the claimant been overpaid \$1,633.00 in benefits she received for the weeks ending November 27, 2010, through January 22, 2011?

Is the claimant eligible for a waiver of any overpayment?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of October 24, 2010. She filed claims for the weeks ending November 27, 2010, through January 22, 2011. She received her maximum weekly benefit amount of \$182.00 for the weeks ending November 27, 2010, through January 15, 2011. She received \$177.00 for the week ending January 22, 2011.

On March 28, 2011, a claims specialist contacted the claimant and employer to find out why the claimant's employment ended. The employer participated at the fact-finding interview. Based on the information provided by both parties, an April 1, 2011 determination (reference 08) held the claimant qualified to receive benefits. The employer appealed this determination.

After the parties presented testimony on May 16, 2011, an administrative law judge reversed the April 1, 2011 determination and concluded the claimant was not qualified to receive benefits. See decision for appeal 11A-UI-04543-BT. The claimant appealed this decision to the

Employment Appeal Board. On August 29, 2011, the Employment Appeal Board affirmed the administrative law judge's decision.

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 11A-UI-04543-BT, the claimant has been overpaid \$1,633.00 in benefits she received for the weeks ending November 27, 2010, through January 22, 2011. The claimant is not at fault in receiving the overpayment. Since the employer participated at the initial level, the claimant is not eligible for waiver of the overpayment. The claimant is required to pay back \$1,633.00.

DECISION:

The representative's August 10, 2012 determination (reference 09) is affirmed. Based on the decision for appeal 11A-UI-04543-BT that the Employment Appeal Board affirmed, the claimant was not legally entitled to receive benefits as of November 21, 2010. She has been overpaid \$1,633.00 in benefits she received for the weeks ending November 27, 2010, through January 22, 2011. Even though the claimant is not at fault in receiving the overpayment, she is required to pay back benefits she was not legally entitled to receive.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css