

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MARIE E FORTUNE**  
Claimant

**PREMIER STAFFING INC**  
Employer

**APPEAL NO: 15A-UI-01673-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/04/15  
Claimant: Appellant (4)**

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Iowa Code § 96.3-7 – Overpayment of Benefits  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

An appeal was filed from a representative's unemployment insurance decision dated February 4, 2015 (reference 04) which found the claimant had been overpaid unemployment insurance benefits in the amount of \$7,560.03 for three weeks between January 4, 2015 and January 24, 2015 because of a disqualification decision made by a representative finding the claimant had voluntarily left her employment with Premier Staffing, Inc. under disqualifying conditions. A telephone hearing was scheduled for March 9, 2015. Although duly notified, the claimant, the appellant herein, did not submit a telephone number for the hearing and did not participate in the hearing. Based upon the appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

**ISSUE:**

At issue in this matter is whether the decision previously entered should be affirmed.

**FINDINGS OF FACT:**

The parties were properly notified of the scheduled hearing on this appeal. The appellant 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.

Having considered all of the evidence in the record, the administrative law judge concludes that the claimant was overpaid unemployment insurance benefits in the amount of \$252.00 each week for the weeks ending January 10, 2015 through January 24, 2015. This overpayment was caused by a representative's decision that disqualified Ms. Fortune from receiving unemployment insurance benefits based upon her quitting employment from Premier Staffing, Inc.

The administrative law judge notes that although the representative's decision holds that the claimant has been overpaid benefits in the amount of \$7,560.03 for the three weeks in question, agency records reflect that the correct amount of the overpayment is \$756.00 based upon the claimant's weekly benefit amount of \$252.00 being paid to the claimant in error for the three weeks in question.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant has been overpaid unemployment insurance benefits. It does. The second question before the administrative law judge is whether the evidence in the record establishes the claimant has been overpaid unemployment insurance benefits in the amount of \$7,560.03. It does not.

Iowa Admin. Code r. 871-26.8(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.

The administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case should be affirmed. The portion of the determination finding the claimant has been overpaid unemployment insurance benefits is affirmed. The portion of the determination finding the claimant is liable to repay \$7,560.03 is modified to find the claimant is liable to repay \$756.00 in overpaid unemployment insurance benefits.

Iowa Code § 96.3-7 provides in pertinent part:

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. . . .

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 unemployment insurance decision dated February 4, 2015, reference 04, is affirmed as modified. The portion of the determination finding the claimant liable to repay an overpayment of unemployment insurance benefits is affirmed. The portion of the determination finding the claimant is liable to repay \$7,560.03 in overpayments is modified to find the claimant is liable to repay \$756.00 in unemployment insurance benefits. The adjudicator's determination is affirmed as modified.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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