

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA M MITCHELL
Claimant

APPEAL NO. 12A-UI-09364-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/11/12
Claimant: Appellant (2)**

Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

Debra Mitchell filed a timely appeal from the July 26, 2012, reference 02, decision that concluded she had been overpaid unemployment insurance benefits in the amount of \$2,694.00 for 19 weeks ending July 21, 2012. The overpayment decision indicated that it was based on a March 21, 2012 decision that disqualified Ms. Mitchell for unemployment insurance benefits in connection with a second benefit year. The overpayment decision indicated that the March 21 disqualification decision had been affirmed by an administrative law judge decision on April 24, 2012. The overpayment decision indicated that Ms. Mitchell would be returned to her March 6, 2011 emergency unemployment compensation claim and that “these same weeks will be reentered on that claim and if you are eligible, those weeks will be used to offset a portion or all of your overpayment.” After due notice was issued, a hearing was started on August 28, 2012 and concluded on September 19, 2012. Ms. Mitchell participated in the hearing. Exhibit A and Department Exhibits D-1 through D-5 were received into evidence.

ISSUE:

Whether Ms. Mitchell was overpaid unemployment insurance benefits in the amount of \$2,694.00 for 19 weeks between March 11, 2012 and July 21, 2012. Based on the August 1, 2012, reference 03 decision, the administrative law judge concludes that Ms. Mitchell was *not* overpaid unemployment insurance benefits in the amount of \$2,694.00 for 19 weeks between March 11, 2012 and July 21, 2012.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Debra Mitchell established a claim for a second benefit year that was effective March 11, 2012. For the 19-week period of March 11, 2012 through July 21, 2012, Ms. Mitchell received *regular* benefits totaling \$2,694.00.

On March 21, 2012, a Workforce Development representative entered a reference 01 decision that denied benefits in connection with the second benefit year that started March 11, 2012

based on an agency conclusion that Ms. Mitchell had not met the \$250.00 minimum earnings requirement to be eligible for benefits in connection with a second benefit year.

Ms. Mitchell appealed the March 21, 2012, reference 01 decision. On April 24, 2012, an administrative law judge entered a decision that affirmed the March 21, 2012, reference 01 decision. See Appeal Number 12A-UI-03221-VST.

Ms. Mitchell appealed the administrative law judge's decision. On August 15, 2012, the Employment Appeal Board entered a decision that affirmed the administrative law judge decision. Ms. Mitchell did not appeal from the Board's decision. See Hearing Number 12B-UI-03221.

The Board had added an explanatory comment as part of its decision: "The majority [of] Board members would comment that this decision has no bearing on any subsequent Iowa Workforce Development Center decision, which found the Claimant has requalified based on insured wages of at least \$250." See Hearing Number 12B-UI-03221. The Board's comment was a reference to the August 1, 2012, reference 03 decision that *allowed* benefits, effective March 11, 2012, in connection with the second benefit year based on an agency conclusion that Ms. Mitchell *had* met the \$250.00 minimum earnings requirement. In other words, the Employment Appeal Board acknowledged the Workforce Development Claims Division's authority to reconsider its own March 21, 2012, reference 01 decision and enter a new decision that effectively reversed the March 21, 2012, reference 01 decision.

The July 26, 2012, reference 02 overpayment decision issued after the April 24, 2012 administrative law judge decision, but before the Employment Appeal Board decision and before the August 1, 2012, reference 03 decision that held Ms. Mitchell had, in fact, met the \$250.00 minimum earnings requirement and was, in fact, eligible for benefits, effective March 11, 2012, in connection with the new benefit year that started on that date.

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 July 26, 2012, reference 02, overpayment decision was effectively nullified by the Claims Division's August 1, 2012, reference 03, decision that allowed benefits, effective March 11, 2012, in connection with the second benefit year based on a conclusion that she had, in fact, met the \$250.00 minimum earnings requirement. Based on the August 1, 2012, reference 03 decision, the administrative law judge concludes that Ms. Mitchell was *not* overpaid unemployment insurance benefits in the amount of \$2,694.00 for 19 weeks between March 11, 2012 and July 21, 2012.

DECISION:

The July 26, 2012, reference 02, overpayment decision is reversed. The claimant was *not* overpaid unemployment insurance benefits in the amount of \$2,694.00 for 19 weeks between March 11, 2012 and July 21, 2012.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw