

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GINGER L LAKOSE
427 S 2ND AVE W
NEWTON IA 50208

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 05A-UI-01110-RT
OC: 12-19-04 R: 02
Claimant: Appellant (2)

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 Workforce Development. 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant, Ginger L. LaKose, filed a timely appeal from an unemployment insurance decision dated January 31, 2005, reference 02, determining that she was overpaid unemployment insurance benefits. After due notice was issued, a telephone hearing was held on February 18, 2005, with the claimant participating. This appeal was consolidated with appeal number 05A-UI-01109-RT for the purposes of the hearing with the consent of the claimant. There was no employer or respondent noticed in this appeal and the employer with which this appeal was consolidated, Iowa Telecommunications Services, Inc., did not participate in the hearing because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant filed for unemployment insurance benefits effective December 19, 2004 and began receiving benefits which continued thereafter. The claimant received unemployment insurance benefits in the amount of \$1,547.00 as follows: \$307.00 for benefit week ending December 25, 2004 (earnings \$80.00) and \$310.00 per week for four weeks from benefit week ending January 1, 2005 to benefit week ending January 22, 2005. This amount is now shown as overpaid and is the subject of this appeal. In appeal number 05A-UI-01109-RT, the administrative law judge concluded the claimant was entitled to receive these benefits because her separation from her employer, Iowa Telecommunications Services, Inc., was not disqualifying.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is overpaid unemployment insurance benefits in the amount of \$1,547.00 for five weeks between December 19, 2004 and January 22, 2005. The administrative law judge concludes that the claimant is not overpaid that amount for that period.

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 concludes that the claimant has received unemployment insurance benefits in the amount of \$1,547.00 since separating from the employer, Iowa Telecommunications Services, Inc., on or about November 19, 2004 and filing for such benefits effective December 19, 2004. In appeal number 05A-UI-01109-RT, the administrative law judge concluded that the claimant was entitled to receive such benefits because her separation from the employer was not disqualifying. Accordingly, the administrative law judge concludes that the claimant has not received unemployment insurance benefits in the amount of \$1,547.00 to which she is not entitled and she is, therefore, not overpaid such benefits.

DECISION:

The representative's decision dated January 31, 2005, reference 02, is reversed. The claimant, Ginger L. LaKose, is not overpaid unemployment insurance benefits in the amount of \$1,547.00 for five weeks between December 19, 2004 and January 22, 2005.

b/kjf