

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**NGOZI Q. KEMDIRIM**  
**2100 EVERGREEN AVE. APT. 12**  
**DES MOINES, IA 50320-1422**

**INVESTIGATIONS AND RECOVERY, IWD**  
**ATTN: IRMA LEWIS**  
**150 DES MOINES STREET**  
**DES MOINES, IA 50309**

JOE WALSH, IWD

**Appeal Number: 11IWDUI114**  
**OC: 12/14/08**  
**Claimant: Appellant (1)**

**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 Notice of Appeal, directly to the ***Employment Appeal Board, 4<sup>TH</sup> 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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June 30, 2011

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(Decision Dated & Mailed)

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Iowa Code section 96.3-7 – Recovery of Overpayment Benefits

**STATEMENT OF THE CASE**

Claimant Ngozi Kemdirim filed an appeal from a decision issued by Iowa Workforce Development (“IWD”) dated February 14, 2011, reference 07. IWD determined Kemdirim received a \$5,858 overpayment because she failed to report wages earned with Pinnacle Health Facilities (“Pinnacle”). IWD transmitted the case to the Department of Inspections and Appeals to schedule a contested case hearing. When IWD transmitted the case, it mailed a copy of the administrative file to Kemdirim.

On June 27, 2011, a contested case hearing was held before Administrative Law Judge Heather L. Palmer at the Wallace State Office Building. Kemdirim appeared and testified. Irma Lewis appeared and testified on behalf of IWD. Documents 1 through 13

were admitted into the record.<sup>1</sup> Chukwuemeka Obiora with Language Line Services provided interpretation services in Igbo. Kemdirim agreed the interpretation services were satisfactory on the record.

### ISSUE

Whether IWD correctly determined that the Claimant was overpaid unemployment benefits, and, if so, whether the overpayment was correctly calculated.

### FINDINGS OF FACT

Kemdirim received unemployment benefits in 2010. IWD learned Kemdirim received wages from Pinnacle from July 24, 2010 through December 25, 2010. Kemdirim did not report receiving any wages during this period.

IWD verified Kemdirim's wages with Pinnacle and determined Kemdirim received the following overpayments:

Week Ending	Wages Reported	Wages Received	UI Paid	Stimulus	UI Entitled	Overpayment
7/24/10	\$0	\$165	\$423		\$363	\$60
7/31/10	\$0	\$330	\$423		\$198	\$225
8/7/10	\$0	\$341	\$423		\$187	\$236
8/14/10	\$0	\$341	\$423		\$187	\$236
8/21/10	\$0	\$341	\$423		\$187	\$236
8/28/10	\$0	\$330	\$423		\$198	\$225
9/4/10	\$0	\$341	\$423		\$187	\$236
9/11/10	\$0	\$418	\$423		\$110	\$313
9/18/10	\$0	\$341	\$423		\$187	\$236
9/25/10	\$0	\$341	\$423		\$187	\$236
10/2/10	\$0	\$341	\$423		\$187	\$236
10/9/10	\$0	\$387	\$423	\$25	\$141	\$282
10/16/10	\$0	\$410	\$423	\$25	\$118	\$305
10/23/10	\$0	\$400	\$423	\$25	\$128	\$295
10/30/10	\$0	\$403	\$423	\$25	\$125	\$295
11/6/10	\$0	\$390	\$423	\$25	\$138	\$285
11/13/10	\$0	\$397	\$423	\$25	\$131	\$292
11/20/10	\$0	\$390	\$423	\$25	\$138	\$285
11/27/10	\$0	\$397	\$423	\$25	\$131	\$292
12/4/10	\$0	\$494	\$423	\$25	0	\$423 + \$25
12/11/10	\$0	\$393	\$423	\$25	\$135	\$288
12/18/10	\$0	\$281	\$423	\$25	\$247	\$176
12/25/10	\$0	\$245	\$423	\$25	\$283	\$140

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<sup>1</sup> I received an ex parte letter from Shannell Allen at IWD the Friday before the Monday hearing. I disregarded the document, which contained hearsay statements about conversations with Kemdirim.

IWD concluded Kemdirim received a total overpayment of \$5,858. Kemdirim appealed.

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

When IWD determines an individual who received unemployment benefits was ineligible to receive benefits, IWD must recoup the benefits received irrespective of whether the individual acted in good faith and was not otherwise at fault.<sup>2</sup> IWD may, in its discretion, recover the overpayment either by having a sum equal to the overpayment deducted from any future benefits payable to the individual, or by having the individual pay IWD a sum equal to the overpayment.<sup>3</sup>

An individual is totally unemployed in any week the individual has no payable wages.<sup>4</sup> An individual is deemed partially unemployed when the individual works less than the individual's regular full-time week and earns less than the individual's weekly benefit, plus \$15.<sup>5</sup>

Kemdirim's weekly benefit amount was \$423. \$423 plus \$15 is \$438. Kemdirim received a \$25 Economic Stimulus payment for the weeks ending October 9, 2010 through December 25, 2010. For the week ending December 4, 2010, Kemdirim received wages exceeding \$438. Because Kemdirim was not entitled to any unemployment benefits that week, she was not entitled to receive the Economic Stimulus payment. IWD has established an overpayment of \$448 for the week ending December 4, 2010.

For the remaining weeks Kemdirim was partially unemployed because she received wages less than \$438, thus she was entitled to receive the Economic Stimulus payments. When an individual earns less than the individual's weekly benefit amount plus \$15, "the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount."<sup>6</sup> One-fourth of Kemdirim's weekly benefit amount is \$105.

For the week ending July 24, 2010, Kemdirim received \$165 in wages. Subtracting \$105 from \$165 is \$60. Deducting this from her weekly benefit amount of \$423 is \$363. Because Kemdirim was only entitled to receive \$363 in unemployment benefits, she received an overpayment of \$60 for each of the week ending July 24, 2010.

For the weeks ending July 31, 2010 and August 28, 2010, Kemdirim received \$330 in wages. Subtracting \$105 from \$330 is \$225. Deducting this from her weekly benefit amount of \$423 is \$198. Because Kemdirim was only entitled to receive \$198 in

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<sup>2</sup> Iowa Code § 96.3(7) (2009).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 96.19(38)a.

<sup>5</sup> *Id.* § 96.19(38)b(1).

<sup>6</sup> 871 IAC 24.18.

unemployment benefits, she received an overpayment of \$225 for each of the weeks ending July 31, 2010 and August 28, 2010.

For the weeks ending August 7, 2010, August 14, 2010, August 21, 2010, September 4, 2010, September 18, 2010, September 25, 2010, and October 2, 2010, Kemdirim received \$341 in wages. Subtracting \$105 from \$341 is \$236. Deducting this from her weekly benefit amount of \$423 is \$187. Because Kemdirim was only entitled to receive \$187 in unemployment benefits, she received an overpayment of \$236 for each of the weeks ending August 7, 2010, August 14, 2010, August 21, 2010, September 4, 2010, September 18, 2010, September 25, 2010, and October 2, 2010.

For the week ending September 11, 2010, Kemdirim received \$418 in wages. Subtracting \$105 from \$418 is \$313. Deducting this from her weekly benefit amount of \$423 is \$110. Because Kemdirim was only entitled to receive \$110 in unemployment benefits, she received an overpayment of \$313 for the week ending September 11, 2010.

For the week ending October 9, 2010, Kemdirim received \$387 in wages. Subtracting \$105 from \$387 is \$282. Deducting this from her weekly benefit amount of \$423 is \$141. Because Kemdirim was only entitled to receive \$141 in unemployment benefits, she received an overpayment of \$282 for the week ending October 9, 2010.

For the week ending October 16, 2010, Kemdirim received \$410 in wages. Subtracting \$105 from \$410 is \$305. Deducting this from her weekly benefit amount of \$423 is \$118. Because Kemdirim was only entitled to receive \$118 in unemployment benefits, she received an overpayment of \$305 for the week ending October 16, 2010.

For the week ending October 23, 2010, Kemdirim received \$400 in wages. Subtracting \$105 from \$400 is \$295. Deducting this from her weekly benefit amount of \$423 is \$128. Because Kemdirim was only entitled to receive \$128 in unemployment benefits, she received an overpayment of \$295 for the week ending October 23, 2010.

For the week ending October 30, 2010, Kemdirim received \$403 in wages. Subtracting \$105 from \$403 is \$298. Deducting this from her weekly benefit amount of \$423 is \$125. Because Kemdirim was only entitled to receive \$124 in unemployment benefits, she received an overpayment of \$298 for the week ending October 30, 2010.

For the weeks ending November 6, 2010 and November 20, 2010, Kemdirim received \$390 in wages. Subtracting \$105 from \$390 is \$285. Deducting this from her weekly benefit amount of \$423 is \$138. Because Kemdirim was only entitled to receive \$138 in unemployment benefits, she received an overpayment of \$288 for each of the weeks ending November 6, 2010 and November 20, 2010.

For the weeks ending November 13, 2010 and November 27, 2010, Kemdirim received \$397 in wages. Subtracting \$105 from \$397 is \$292. Deducting this from her weekly benefit amount of \$423 is \$131. Because Kemdirim was only entitled to receive \$131 in unemployment benefits, she received an overpayment of \$292 for each of the weeks ending November 13, 2010 and November 27, 2010.

For the week ending December 11, 2010, Kemdirim received \$393 in wages. Subtracting \$105 from \$393 is \$288. Deducting this from her weekly benefit amount of \$423 is \$135. Because Kemdirim was only entitled to receive \$124 in unemployment benefits, she received an overpayment of \$288 for the week ending December 11, 2010.

For the week ending December 18, 2010, Kemdirim received \$281 in wages. Subtracting \$105 from \$281 is \$176. Deducting this from her weekly benefit amount of \$423 is \$247. Because Kemdirim was only entitled to receive \$247 in unemployment benefits, she received an overpayment of \$176 for the week ending December 11, 2010.

For the week ending December 25, 2010, Kemdirim received \$245 in wages. Subtracting \$105 from \$245 is \$140. Deducting this from her weekly benefit amount of \$423 is \$283. Because Kemdirim was only entitled to receive \$283 in unemployment benefits, she received an overpayment of \$140 for the week ending December 25, 2010.

The record supports IWD's determination that Kemdirim received a total overpayment of \$5,858.

Kemdirim agrees she received the overpayments. Kemdirim testified that when she first started receiving unemployment insurance benefits she went to her local IWD office and spoke with someone about receiving unemployment. Kemdirim reported the individual told her she could receive unemployment while working. Kemdirim did not identify who the individual was that she spoke with. She did not call the individual at hearing to testify. Kemdirim seeks to invoke the doctrine of equitable estoppel. The Iowa Supreme Court has consistently held that the doctrine of equitable estoppel may not be invoked against the state of Iowa because the state of Iowa.<sup>7</sup> Even assuming Kemdirim's allegations are true, she may not rely on the doctrine of equitable estoppel.

Kemdirim did not explain at hearing why she failed to report any wages when she called into the unemployment office each week to collect unemployment. I do not find her testimony credible that an unnamed employee of IWD informed her she did not need to report her wages while she was working.

Kemdirim is upset because she is currently unemployed and she is not receiving any unemployment benefits. Unfortunately, she received benefits she was not entitled to receive in the past. IWD's decision must be affirmed.

## **DECISION**

IWD's correctly found Jones received a \$5,858 overpayment and its decision is affirmed.

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<sup>7</sup> *Sullivan v. Iowa Dep't Hrg. Bd. of the Iowa Beer & Liquor Control Dep't*, 325 N.W.2d 923 (Iowa Ct. App. 1982) (noting Iowa Supreme Court has consistently held the doctrine of equitable estoppel cannot be invoked against the state of Iowa because the state of Iowa is charged with knowledge of the law and cannot ignore the plain meaning of the law).