

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN R GRAEVE**  
Claimant

**APPEAL NO: 10A-UI-00437-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/07/09  
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The claimant appealed a representative's December 29, 2009 decision (reference 03) that concluded she had been overpaid \$2,808.00 in benefits she received for the weeks ending June 13 through August 1, 2009. The overpayment occurred as the result of an administrative law judge's August 6, 2009 decision that reversed a July 8, 2009 decision that had held the claimant eligible to receive benefits. A telephone hearing was held on February 20, 2010. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Has the claimant been overpaid \$2,808.00 in benefits and is she eligible for a waiver of any overpayment?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of June 7, 2009. She filed claims for the weeks ending June 13 through August 1, 2009. She received her maximum weekly benefit amount of \$326.00 for each of these weeks. For each of these weeks, the claimant also received an additional \$25.00 from the government's economic stimulus program.

The claimant participated in a fact-finding interview on July 7, 2009. The claimant's former employer also participated at the fact-finding interview. On July 8, a representative concluded the claimant was qualified to receive benefits because the employer had discharged her for non disqualifying reasons.

The claimant's former employer appealed the July 8 decision. An administrative law judge reversed the July 8 representative's decision and decided the claimant was not qualified to receive benefits as of June 7, 2009. See decision for appeal 09A-UI-10357-NT. The claimant appealed the administrative law judge's decision to the Employment Appeal Board. The Employment Appeal Board affirmed the decision on October 6, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

The 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. However, 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. Iowa Code section 96.3-7-b.

Based on the decision for appeal 09A-UI-10357-NT, the claimant is not legally entitled to receive benefits as of June 7, 2009. She has been overpaid a total of \$2,808.00 in benefits she received for the weeks ending June 13 through August 1, 2009.

The claimant is not at fault in receiving the overpayment. Since the employer participated at the fact-finding interview, the claimant is not eligible for a waiver of the overpayment. Therefore, the claimant is required to pay back \$2,808.00 in benefits she received.

**DECISION:**

The representative's December 29, 2009 decision (reference 03) is affirmed. The claimant has been overpaid \$2,808.00 in benefits she received for the weeks ending June 13 through August 1, 2009. While the claimant is not at fault in receiving the overpayment, she is not eligible for a waiver of the overpayment. Therefore, the claimant is required to pay back the overpayment.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs