

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNETTE UPCHURCH
Claimant

APPEAL NO. 08A-UI-05811-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT

**OC: 05/04/08 R: 03
Claimant: Appellant (2)**

Iowa Code section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Lynnette Upchurch filed a timely appeal from the June 17, 2008, reference 02, decision that she had been overpaid benefits of \$545.00 for the five-week period of May 4, 2008 through June 7, 2008. After due notice was issued, a hearing was held on June 10, 2008. Ms. Upchurch participated and presented additional testimony from her boyfriend, Jason Szabo. The administrative law judge took official notice of the Agency's administrative records of benefits paid to the claimant. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-05810-JTT, and the administrative law judge hereby takes official notice of the decision entered in that matter.

ISSUE:

Whether Ms. Upchurch has been overpaid benefits of \$545.00 for the five-week period of May 4, 2008 through June 7, 2008 in connection with a January 25, 2008 separation from Spherion Atlantic Enterprises.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Upchurch established a claim for benefits that was effective May 4, 2008. Ms. Upchurch received benefits of \$545.00 for the five-week period of May 4, 2008 through June 7, 2008. The overpayment issue in this case was created by a disqualification decision that has now been reversed. See Appeal Number Appeal Number 08A-UI-05810-JTT.

REASONING AND CONCLUSIONS OF LAW:

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.

Because the decision that prompted the overpayment decision has been reversed on appeal, the administrative law judge concludes that the claimant has not been overpaid unemployment insurance benefits of \$545.00 for the five-week period of May 4, 2008 through June 7, 2008.

However, in Appeal Number 08A-UI-05810-JTT the administrative law judge remanded the matter for determination of Ms. Upchurch's ability to work and availability for work since the January 25, 2008 separation. A determination that Ms. Upchurch was either unable to work or unavailable for work during the period for which she has received benefits would prompt a new overpayment decision concerning the same period at issue herein.

DECISION:

The June 17, 2008, reference 02, decision is reversed. The claimant has not been overpaid unemployment insurance benefits of \$545.00 for the five-week period of May 4, 2008 through June 7, 2008.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw