

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ESTHER M DESEH
Claimant

APPEAL NO. 11A-UI-07324-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/16/11
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayments
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 1, 2011, reference 06, decision that held claimant overpaid. After due notice was issued, a hearing was held by telephone conference call on July 26, 2011. The claimant did not participate. Exhibits A, B, One and Two were admitted to the record. Claimant responded to the hearing notice but did not participate, as she was not available at either number when called.

ISSUE:

The issue is whether claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The overpayment issue in this case was created by a disqualification decision that has now been affirmed. Claimant is overpaid \$2,785.00 for the 18 weeks ending February 19, 2011. Employer did participate at the fact-finding interview.

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 administrative law judge concludes that claimant is overpaid unemployment insurance benefits in the amount of \$2,785.00 for the 18 weeks ending February 19, 2011, pursuant to Iowa Code section 96.3-7, as the disqualification decision that created the overpayment decision has now been affirmed.

DECISION:

The decision of the representative dated June 1, 2011, reference 06, is affirmed. Claimant is overpaid unemployment insurance benefits in the amount of \$2,785.00.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw