

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AFTON M WAGNER
Claimant

APPEAL NO: 12A-UI-07446-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/11/12
Claimant: Appellant (1)

Iowa Code § 96.3(7) –Recovery of Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The Appeals Section assumed the claimant appealed a representative's June 22, 2012 determination (reference 05) that held she had been overpaid \$2,480.00 in benefits she received between March 11 and May 19, 2012. The overpayment occurred after an administrative law judge's decision reversed an earlier decision and concluded the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing with her witness, Shane Kay.

During the hearing, the claimant indicated she was actually appealing the administrative law judge's May 31, 2012 decision. The claimant's June 19 appeal letter was then forwarded to the Employment Appeal Board. The issues set up for this appeal are addressed in this decision.

Based on the evidence, the claimant's arguments, and the law, the administrative law judge concluded that unless the decision for appeal 12A-UI-03925-ET is reversed, the claimant has been overpaid \$2,480.00 in benefits and she is not eligible to receive a waiver of the overpayment.

ISSUES:

Has the claimant been overpaid \$2,480.00 in benefits she received for the weeks ending March 17 through May 19, 2012?

Is the claimant eligible for a waiver of the overpayment?

FINDINGS OF FACT:

After the claimant's employment ended, she claimant established a claim for benefits during the week of March 11, 2012. She filed weekly claims for the weeks ending March 17 through May 19, 2012. She received her maximum weekly benefits amount of \$248.00 for each week.

Shortly prior to April 10, 2012, the employer's human resource administrator and the claimant participated at the fact-finding interview. On April 10, 2012, a representative issued a determination holding the claimant eligible to receive benefits. The employer appealed this determination.

As a result of a hearing before an administrative law judge, the administrative law judge reversed the initial determination. The administrative law judge concluded the claimant was not qualified to receive benefits because she had been discharged for reasons constituting work-connected misconduct. See decision for 12-UI-03925-ET. The claimant intended to appeal this decision with the appeal letter she mailed to the Appeals Section on June 20, 2012. The claimant's appeal letter was forwarded to the Employment Appeal Board on or about July 16, 2012.

REASONING AND CONCLUSIONS OF LAW:

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on the decision for appeal 12A-UI-03925-ET, the claimant is not legally entitled to receive benefits as of March 11, 2012. This means she was not legally entitled to receive benefits for the weeks ending March 17 through May 19, 2012, and has been overpaid a total of \$2,480.00 in benefit for these weeks (unless the Employment Appeal Board reverses the decision for appeal 12A-UI-03925-ET).

The unemployment insurance 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. 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.

The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7)b.

In this case, the claimant received benefits and a representative initially held her qualified to receive benefits. Later, an administrative law judge reversed the initial representative's determination and concluded she was not qualified to receive benefits as of March 11, 2012. 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 and is required to repay this amount to the Department.

DECISION:

The representative's June 22, 2012 determination (reference 05 is affirmed. If the Employment Appeal Board reverses the decision for appeal 12A-UI-03925-ET, the claimant will not be overpaid any benefits. If the Employment Appeal Board does not reverse the decision, the claimant has been overpaid \$2,480.00 in benefits she received for the weeks ending March 17 through May 19, 2012. Even though the claimant is not at fault in receiving the overpayment, she is not eligible for waiver of the overpayment because the employer participated at the fact finding interview.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css