

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCY F NALLY
Claimant

APPEAL NO. 12A-UI-09358-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/29/12
Claimant: Appellant (3)

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Marcy Nally filed a timely appeal from the August 2, 2012, reference 04, decision that she was overpaid \$766.00 for two weeks between July 1, 2012 and July 14, 2012 based on a July 23, 2012 disqualification decision. After due notice was issued, a hearing was held on September 19, 2012. Ms. Nally participated. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-09357-JTT and the administrative law judge hereby takes official notice of the decision entered in that matter. Exhibit A was received into evidence. The administrative law judge took official notice of the agency's administrative record of the benefits disbursed to Ms. Nally.

ISSUE:

Whether Ms. Nally has been overpaid unemployment insurance benefits. The administrative law judge concludes that Ms. Nally has indeed been overpaid benefits. However, the overpayment amount is \$1,149.00 for the period of July 1, 2012 through August 11, 2012, rather than \$766.00 for two weeks between July 1, 2012 and July 14, 2012.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Marcy Nally established a claim for unemployment insurance benefits that was effective April 29, 2012. Workforce Development set calculated Ms. Nally's weekly benefit amount to be \$383.00. Ms. Nally did not call in a weekly claim and did not receive any benefits during the period of April 29, 2012 through June 30, 2012. Ms. Nally reopened her claim effective July 1, 2012. Ms. Nally received \$383.00 in benefits for the week ending July 7, 2012 and \$383.00 in benefits for the week ending July 14, 2012. Ms. Nally continued her claim for the week ending July 21, 2012, but did not receive any benefits for that week. Ms. Nally was then approved for benefits for the weeks ending July 28 and August 4, 2012, but the \$383.00 in benefits that would have been disbursed for each of those weeks, \$766.00 total, were withheld and offset to recover what the agency believed at that time to be an overpayment of benefits for the weeks ending July 7 and 14. Ms. Nally then received \$383.00 in benefits for the week ending August 11, 2012. Ms. Nally then discontinued her claim.

On July 23, 2012, a Workforce Development representative entered a reference 03 decision that denied benefits for the period of April 29, 2012 through July 21, 2012 based on an agency conclusion that she had not engaged in an active and earnest search for employment during that period. The July 23, 2012, reference 03, decision was modified on appeal. See Appeal Number 12A-UI-09357-JTT. That portion of the July 23, 2012, reference 03, decision that denied benefits for the period of April 29, 2012 through July 21, 2012 was affirmed. However, the administrative law judge also concluded that Ms. Nally was not eligible for benefits for the period of July 22, 2012 through August 11, 2012, when she discontinued her claim for benefits. See Appeal Number 12A-UI-09357-JTT.

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.

Because Ms. Nally was not eligible for benefits for the period of April 29, 2012 through August 11, 2012, when she discontinued her claim for benefits, any benefits disbursed to her for the period would constitute an overpayment if benefits. Ms. Nally is overpaid \$1,149.00 for the period of July 1, 2012 through August 11, 2012. Ms. Nally must repay that amount.

DECISION:

The Agency representative's August 2, 2012, reference 04, is modified as follows. The claimant was overpaid \$1,149.00 for the period of July 1, 2012 through August 11, 2012. The claimant must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css