

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER L KELLY**  
Claimant

**APPEAL NO. 09A-UI-09492-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Original Claim: 03/09/08  
Claimant: Appellant (1)**

Section 96.3-7 – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Heather L. Kelly appealed a representative's decision dated June 22, 2009, reference 08, that concluded the claimant was overpaid unemployment insurance benefits in the amount of \$625.00 for the three weeks between January 11, 2009, and January 31, 2009, because of a decision dated February 18, 2009, that disqualified the claimant as not being able and available for work. A telephone hearing was scheduled for and held on July 30, 2009, pursuant to due notice. The claimant participated. Participating on behalf of the claimant was her attorney, Mr. Robert J. Murphy.

**ISSUE:**

At issue in this matter is whether Heather Kelly has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered all the evidence of the record, finds: The overpayment issue in this case was created by a disqualification decision that has now been affirmed and has become final. (See Appeal No. 09A-UI-02925-E2T and Appeal No. 09B-UI-02925.)

It is the claimant's position that the requirement that she make restitution for this overpayment of unemployment insurance benefits be waived, as she is not financially able to repay the amount and continues to disagree with the underlying decision causing the overpayment.

**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.

The administrative law judge concludes that the claimant is overpaid unemployment insurance benefits in the amount of \$625.00 pursuant to Iowa Code section 96.3-7, as the disqualification decision that created the overpayment decision has now been affirmed. The Iowa Employment Security Law does not provide for a contemplative forgiveness clause, which would allow the administrative law judge to forgive overpayments received by claimants. A review of the claimant's administrative file shows that Ms. Kelly received the overpayment in question and that there have been no activities on her part that would negate her obligation to make restitution.

**DECISION:**

The representative's decision dated June 22, 2009, reference 08, is affirmed. The claimant is overpaid unemployment insurance benefits in the amount of \$625.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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