

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSA M LOPEZ
Claimant

APPEAL NO. 10A-UI-12054-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PACIFIC PROCESSORS INC
Employer

**OC: 10/25/09
Appellant: Appellant (4)**

Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 25, 2010, reference 02, that held she was overpaid benefits \$1,864.97 during the period between October 31, 2009, and June 19, 2010, because she failed to correctly report earnings with Iowa Pacific Processors. A telephone hearing was held on October 11, 2010. The claimant participated. The employer did not participate.

ISSUE:

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The department audited the claimant's unemployment claim filed October 25, 2009. The department concluded the claimant was overpaid benefits \$1,279.00 in the fourth quarter of 2009, and \$795.00 in the second quarter of 2010.

The claimant denies any overpayment for the fourth quarter, because she filed her October unemployment claim due to a layoff and she did not return to work until January 4, 2010. The claimant was working a reduced work-week schedule in May and June 2010, and it appears she may have been reporting gross wages in the week she was paid rather when earned. The claimant admitted she did some work in the weeks claimed for May and June. The department noted the claimant was underpaid benefits for the week(s) ending May 8 (\$85.00), and June 26 (\$124.03) totaling \$209.03. The claimant acknowledges she has an overpayment, but not anywhere near the \$2,000.00 as stated in the department decision.

The employer failed to respond to the hearing notice.

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 the claimant is overpaid benefits \$585.97 for the period from May 9, 2010 to June 26.

The claimant offered credible testimony that she did not work in the fourth quarter of 2009 due to a layoff and that she did not return to work until January 4, 2010. This reduces the overpayment by \$1,279.00. The claimant admitted working some partial weeks in May and June 2010 that support an overpayment of \$795.00, which is reduced by two weeks of underpayment (\$209.03) to \$585.97.

DECISION:

The department decision dated August 25, 2010, reference 02, is modified. The claimant is overpaid benefits \$585.97.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw