

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L CARNICLE
Claimant

APPEAL NO. 09A-UI-15952-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

Original Claim: 06/28/09

Claimant: Appellant (1)

Section 96.3-7 - Recovery of Overpayment of Benefits
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Amanda L. Carnicle (claimant) appealed a representative's October 14, 2009 decision (reference 03) that concluded she had been overpaid unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on November 18, 2009. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant is overpaid unemployment insurance benefits of \$1,338.00.

FINDINGS OF FACT:

A representative issued a decision dated August 13, 2009 (reference 02) that concluded the claimant was disqualified from receiving benefits after a separation from employment from Petco Animal Supplies (employer). The claimant appealed that decision by the August 23, 2009 deadline. An appeal hearing was scheduled for September 3, 2009 under 09A-UI-11942-HT. On September 4 the administrative law judge in that case issued her decision affirming the representative's decision. No evidence was provided to rebut the presumption that the claimant received that administrative law judge's decision within a few days thereafter. The instructions with that decision specified that the decision would become final unless an appeal was made to the Employment Appeal Board at a specified address within 15 days of the date of the decision, so the deadline would fall onto September 19, a Saturday. The instruction also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, September 21. There is no evidence that an appeal was made to the Board by that date; the next appeal by the claimant was not made until October 21, 2009, in response to the October 14 overpayment decision. This administrative law judge concludes that the prior administrative law judge's decision on the separation disqualification was not timely appealed and has now become final.

The overpayment decision was issued in this case as a result of the August 13, 2009 (reference 02) disqualification decision as affirmed by the administrative law judge's September 4, 2009 decision in appeal number 09A-UI-11942-HT.

The claimant established a claim for unemployment insurance benefits effective June 28, 2009. The claimant has received unemployment insurance benefits, including economic stimulus payments, after the separation from employment in the amount of \$1,338.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is overpaid benefits of \$1,338.00.

The claimant did not timely appeal the September 4, 2009 administrative law judge's decision that affirmed the decision resulting in the overpayment in this case. If the claimant had a dispute with whether or not she should have been disqualified as a result of the separation from the employer, then she needed to have filed an appeal from the administrative law judge's September 4 decision within the appeal period for that decision. Iowa Code § 96.6-2; Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979). The decision causing the disqualification has now become final and is not subject to review in this case.

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. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits.

The administrative law judge concludes that the claimant is overpaid benefits of \$1,338.00 pursuant to Iowa Code § 96.3-7 due to the disqualification decision issued on August 13, 2009 and affirmed in the administrative law judge's September 4, 2009 decision in 09A-UI-11942-HT. Even though those benefits were received in good faith, the overpaid benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's October 14, 2009 decision (reference 03) is affirmed. The claimant is overpaid benefits of \$1,338.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw