

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ASHLEY A KUBBY
Claimant

APPEAL NO. 21A-UI-03473-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/29/20
Claimant: Appellant (3)

Iowa Code Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

The claimant, Ashley Kubby, filed a timely appeal from the January 15, 2021 (reference 07) decision that held she was overpaid \$1,428.00 in regular benefits for four weeks between March 29, 2020 and August 29, 2020, based on the October 9, 2020 administrative law judge decision that concluded the claimant was not able and available for work during the four weeks in question. After due notice was issued, a hearing was held on March 26, 2021. The claimant participated in the hearing. The hearing in this matter was consolidated with the hearing in Appeal Numbers 21A-UI-03471-JTT, 21A-UI-03474-JTT and 21A-UI-03475-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, NMRO, the January 15, 2021 (reference 07, 08 and 09) decisions, the administrative law judge decision in Appeal Number 20A-UI-09173-AD-T, the October 2, 2020 appeal hearing recording, and the November 17, 2020 Employment Appeal Board decision in Hearing Number 20B-UI-09173.

ISSUE:

Whether the claimant was overpaid \$1,428.00 in regular benefits for four weeks between March 29, 2020 and August 29, 2020, based on the October 9, 2020 administrative law judge decision that concluded the claimant was not able and available for work during the four weeks in question.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a claim for benefits that was effective March 29, 2020 and received benefits that included \$363.00 in regular benefits for each of the three weeks that ended April 4, April 11, and April 18, 2020. The claimant also received \$349.00 in regular benefits for the week that ended August 29, 2020. The regular benefits for the four weeks in question add up to \$1,348.00.

The claimant also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the three weeks that ended April 4, April 11, and April 18, 2020.

The claimant also received \$300.00 in Lost Wage Assistance Payments (LWAP) for the week that ended August 29, 2020.

On October 9, 2020, an administrative law judge entered a decision that disqualified the claimant for each of the four weeks in question, based on the administrative law judge's conclusion that the claimant was not able to work and available for work during the four weeks in question. See Appeal Number 20A-UI-09173-AD-T. The claimant did not appeal the administrative law judge's decision. The employer appealed the administrative law judge's decision, but later withdrew the appeal and the Employment Appeal Board dismissed the employer's appeal. See Hearing Number 20B-UI-09173.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3(7) provides, in pertinent part:

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.

Iowa Code section 96.6(3) and (4) provides as follows;

3. Appeals.

a. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The notice for a telephone or in-person hearing shall be sent to all the parties at least ten calendar days before the hearing date. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

b. Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

4. Effect of determination. A finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other

proceedings or action involving the same facts brought by the same or related parties before the division

The administrative law judge's decision in Appeal Number 20A-UI-09173-AD-T denied benefits for the four weeks in question. In the absence of a claimant appeal from that decision, and in light of the employer's withdrawal of its appeal from the decision, the administrative law judge's decision became final. Accordingly, the \$1,438.00 in regular benefits that the claimant received for the weeks that ended April 4, April 11, April 18, 2020 and August 29, 2020 are an overpayment of benefits that the claimant must repay.

DECISION:

The January 15, 2021 (reference 07) decision is affirmed in all but the overpayment amount. The decision is modified adverse to the claimant/appellant to reflect that the claimant was overpaid \$1,438.00 in regular benefits for the weeks that ended April 4, April 11, April 18, 2020 and August 29, 2020. The claimant must repay the overpaid benefits.



James E. Timberland
Administrative Law Judge

March 30, 2021
Decision Dated and Mailed

jet/scn