

IOWA DEPARTMENT OF INSPECTIONS & APPEALS  
DIVISION OF ADMINISTRATIVE HEARINGS  
Wallace State Office Building  
Des Moines, Iowa 50319

**Appeal Number:** 08-IWDUI-024  
**OC:** 05/20/07  
**Claimant:** Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4<sup>th</sup> Floor Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**JENNIFER L KESSELBERG**  
**504 S 4<sup>TH</sup> AVENUE**  
**VILLISCA IA 50864-1244**

**STATE CLEARLY**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department . If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**IOWA WORKFORCE DEVELOPMENT**  
**DEB SHEPERD TRA/TAA CLAIMS**  
**150 DES MOINES STREET**  
**DES MOINES IA 50309**

DAN ANDERSON, IWD

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(Administrative Law Judge)

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February 29, 2008

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(Decision Dated & Mailed)

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**Section 96.3-7 - Recovery of Overpayments**

**STATEMENT OF THE CASE:**

The claimant filed an appeal from an Iowa Workforce Development decision dated February 1, 2008, reference 05, which held that the claimant was overpaid TRA weekly benefits in the amount of \$1,240.00 for the four-weeks ending December 15, 2007, because of a department decision that held she was not eligible.

After due notice was issued, a hearing was held by telephone conference call on February 27, 2008.

The claimant participated. Iowa Workforce Development participated by Deb Shepherd, TRA/TAA Benefit Payment Coordinator.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having examined all of the evidence in the record, finds that: The claimant filed a claim for unemployment benefits with an effective date of May 20, 2006. The claimant and other employees were laid-off from Romech (Intier Automotive Seating) on or about May 22, 2006. After receiving a petition, the US Department of labor certified an employment impact date of February 2, 2005 with a certification date of February 23, 2006 that made the workforce eligible for TRA/TAA benefits.

The claimant attended a department meeting on May 24, 2006 where she and other employers were given a packet of information with instruction regarding the Trade Act of 2002 Retraining Program. One of the documents notified the claimant that in order to receive the TRA weekly income benefit she needed to be in a school approved training program not later than eight (8) weeks after the certification date (April 22, 2006) or the last day of the sixteenth week (September 16, 2006) following her separation from employment date (May 23, 2006).

The claimant applied for and was approved for classroom training that began on May 30, 2007. Department Workforce Representative Double counseled with the claimant on May 16, 2007 regarding Trade Readjustment Assistance (TRA) payments. Double was aware the claimant had not applied for schooling (training) within the sixteen-week deadline from her employer separation, and he counseled about the claimant needing financial means to support herself while the Trade Act was providing her with tuition, books, fees and mileage reimbursement.

The department issued a decision letter dated June 7, 2007 that allowed the claimant a TRA weekly income benefit. Later, while in training, the claimant did receive a weekly income benefit of \$310 for each of four weeks ending December 15, 2007 that totaled \$1,240.00. When Double learned the claimant was receiving the benefit, he made an e-mail inquiry of Representative Shepherd about this matter on January 4, 2008. A department audit ensued, and when it was discovered that an err had occurred regarding the 8/16 deadline(s) and the payment of weekly income benefits, the department issued a new decision letter on February 1, 2008, denying the income benefit.

Due to the department err, Shepherd questioned US Department of Labor representatives as to whether a waiver could be granted regarding the issue of a claimant repayment of the overpayment of \$1,240 income benefit. Absent financial hardship, no waiver could be granted. The claimant acknowledged in this hearing that there was no financial hardship/waiver basis for an appeal.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is overpaid TRA income weekly benefits \$1,240.00.

#### **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 (emphasis added) be recovered. The division of job service 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 division a sum equal to the overpayment.

If the division 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 benefits \$1,2400.00 for the 4-week period ending December 15, 2007 pursuant to Iowa Code Section 96.3-7. Although the department err contributed to the overpayment situation, absent a financial hardship waiver, the law requires a repayment of the overpayment, even though the claimant may be without fault (see the law section cited above). While the claimant is not eligible for the weekly income benefit due to the 8/16 deadline requirement(s), she remains eligible for the school program benefit(s).

**DECISION:**

The department representative decision dated February 1, 2008, reference 05, is **AFFIRMED**. The claimant is overpaid TRA weekly income benefits in the amount of \$1,240.00.

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