

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTONI M WRIGHT
Claimant

APPEAL NO. 12A-UI-12953-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/05/12
Claimant: Appellant (1)

Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Brittini M. Wright filed a timely appeal from an unemployment insurance decision dated October 26, 2012, reference 07, that ruled she had been overpaid \$640.00 for the eight weeks between August 5, 2012 and September 29, 2012. Due notice was issued for a telephone hearing to be held November 19, 2012. Although Ms. Wright provided a telephone number at which she could be contacted, three calls to that number at and shortly after the scheduled time of the hearing resulted in busy signals. The administrative law judge closed the record ten minutes after the scheduled time of the hearing because of no contact from the claimant. This decision is based on agency benefit payment records, fact-finding records and decision records.

ISSUE:

Has the claimant been overpaid?

FINDINGS OF FACT:

Brittini M. Wright received unemployment insurance benefits totaling \$640.00 for the eight weeks ending September 29, 2012. Administrative law judge decision 12A-UI-11047-DT issued on October 8, 2012 reversed an earlier fact-finding decision to disqualify Ms. Wright for benefits. She has filed an appeal from that decision to the Employment Appeal Board. The Board has not yet issued its ruling. Ms. Wright's former employer, Marketlink, Inc., participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7, as amended in 2008, provides:

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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The evidence in this record establishes that Ms. Wright received the benefits in question, that her former employer participated in the initial fact-finding interview, that the administrative law judge decision disqualifying her for benefits has been appealed to the Employment Appeal Board. Based on this record, the administrative law judge must affirm the overpayment decision. However, should the Employment Appeal Board eventually rule in Ms. Wright's favor, the overpayment will be eliminated.

DECISION:

The unemployment insurance decision dated October 26, 2012, reference 07, is affirmed. The claimant has been overpaid \$640.00 for the eight weeks ending September 29, 2012.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs