IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

LINDSAY A JENNEY
Claimant

**IOWA WORKFORCE
  DEVELOPMENT DEPARTMENT**

APPEAL NO. 11A-UI-16424-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/06/11
Claimant: Appellant (1)**

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 20, 2011, reference 07, which held claimant liable to repay $2,544.00 in overpayments for the nine weeks between September 25, 2011 and November 26, 2011. After due notice, a hearing was held in Council Bluffs, Iowa on February 7, 2012. Claimant participated personally. Participating on behalf of the claimant was Mr. Mike Toulas, Attorney, Legal Aid.

ISSUE:

The issue is whether the claimant received an overpayment in unemployment insurance benefits and whether the claimant is liable to repay that amount.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Lindsay Jenney was initially awarded unemployment insurance benefits by an adjudicator's decision dated October 21, 2011. Both the claimant and the employer had participated in a fact-finding call with the adjudicator prior to the decision being issued. Hill Brothers, the employer participated through a representative employed by the Talx Company. The Talx Company is the designated representative of Hill Brothers in unemployment matters. Subsequently, the claimant's former employer, Hill Brothers, filed an appeal from the adjudicator's decision and an administrative hearing was held on December 1, 2011 via telephone conference call. On December 2, 2011, an administrative law judge reversed the decision allowing benefits disqualifying the claimant from receiving unemployment insurance benefits until she had earned ten times her weekly benefit amount in insured work and was otherwise eligible. Ms. Jenney received unemployment insurance benefits in the amount of $2,544.00 for nine weeks beginning September 25, 2011 through November 26, 2011. Because of the administrative law judge decision, the benefits that the claimant received for the nine weeks was determined to be an overpayment of unemployment insurance benefits and the claimant was held liable to repay that amount.

It is the claimant's position that she should not have to repay the overpayment because the participation of Hill Brothers in the fact finding was only by a representative and not by a firsthand witness from the company who could provide personal information to Iowa Workforce Development on the facts causing the claimant's separation from employment. The company had participated at the Fact Finding only through an employee representative of the TALX Company.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.
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> 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 administrative law judge concludes the claimant is overpaid unemployment insurance benefits in the amount of $2,544.00 pursuant to Iowa Code § 96.3-7 as the disqualification of the administrative law judge decision dated December 2, 2011 remains in effect and has not been overturned.

The rules and regulations governing participation at the fact-finder's level do not require that the employer participate personally or preclude a representative from presenting disqualifying information at the fact-finder level. The administrative law judge concludes that 871 IAC 24.32(4) is not applicable at the fact-finder's level as the purpose of the informal discovery proceeding is to obtain general information regarding the claimant's separation from employment so the adjudicator can make an initial determination on the claim. Because the employer did participate in the fact-finder's conference, the administrative law judge concludes

that the claimant is liable to make repayment of the $2,544.00 that she has been overpaid in unemployment insurance benefits.

DECISION:

The representative's decision dated December 20, 2011, reference 07, is affirmed. Claimant is overpaid unemployment insurance benefits in the amount of $2,544.00 and is liable to repay that amount.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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