

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORA A TAPKE
Claimant

APPEAL NO. 11A-UI-12082-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/26/11
Claimant: Appellant (1)

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

Lora Tapke filed a timely appeal from the September 7, 2011, reference 03, decision that she was overpaid \$330.00 in unemployment insurance benefits for the week that ended July 9, 2011. After due notice was issued, a hearing was held on October 6, 2011. Ms. Tapke participated. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-UI-12081-JTT. Exhibits A through E and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether the claimant was overpaid \$330.00 in unemployment insurance benefits for the week ending July 9, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lora Tapke established a claim for unemployment insurance benefits that was effective June 26, 2011. Workforce Development calculated Ms. Tapke's weekly benefit amount at \$356.00. For the benefit week that ended July 2, 2011, Ms. Tapke was paid wages that exceeded her weekly benefit and received no unemployment insurance benefits. For the benefit week that ended July 9, 2011, Ms. Tapke received \$330.00 in unemployment insurance benefits. Ms. Tapke received vacation pay for the week that ended July 9, 2011 that exceeded her weekly benefit amount. On July 7, 2011, a Workforce Development representative entered a reference 02 decision that disqualified Ms. Tapke for unemployment insurance benefits for the week ending July 9, 2011, based on her receipt of vacation pay. That disqualification decision has been affirmed on appeal in Appeal Number 11A-UI-12081-JTT.

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.

Because the decision that disqualified Ms. Tapke for unemployment insurance benefits for the week ending July 9, 2011 has been affirmed on appeal, the administrative law judge concludes that Ms. Tapke has indeed been overpaid \$330.00 in unemployment insurance benefits for the week ending July 9, 2011. Ms. Tapke must repay that amount.

DECISION:

The Agency representative's September 7, 2011, reference 03, decision is affirmed. The claimant was overpaid \$330.00 in benefits for the week ending July 9, 2011.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css